Wisconsin Administrative Register

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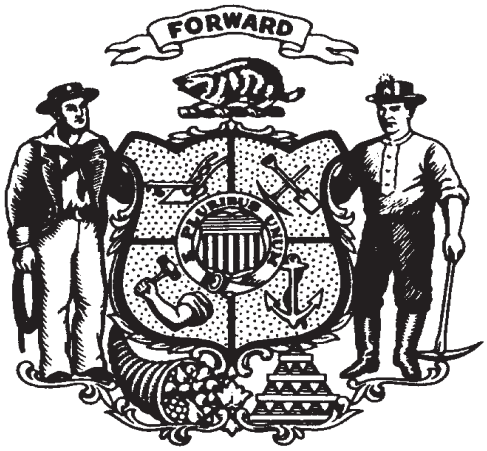

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WISCONSIN ADMINISTRATIVE REGISTER

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

Finding of Emergency

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

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

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

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

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

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

(7) This emergency rule also exempts, from food processing plant license requirements under s. 97.29, Stats., a person who collects and processes relatively small quantities of maple sap to produce maple syrup or concentrated maple sap for sale to other processors for further processing. These small−scale processing activities pose minimal food safety risks, and the current license requirement imposes an unnecessary cost and compliance burden. An emergency rule is needed to relieve these cost and compliance burdens for the maple sap collection and processing season that typically begins in March. This emergency rule creates a temporary license exemption, pending the completion of "permanent" rules by the normal rulemaking process. This emergency rule clearly defines the scope, application and terms of the exemption, in order to protect public health, safety and welfare.

Publication Date:	**April 22, 2010**
Effective Dates:	**April 22, 2010 through September 18, 2010**
Extension Through:	**November 17, 2010**
Hearing Date:	**May 25, 2010**

2. EmR1038 — Rule adopted to create **section ATCP 21.21,** relating to restricting the import of certain plants, wood and wood products to prevent the introduction of thousand cankers disease of walnut trees into this state.

Finding of emergency

(1) Thousand cankers disease is an emerging fungal disease that can be carried by the walnut twig beetle (the beetle is native to this country). The disease poses a serious threat to black walnut trees, an important forest species in Wisconsin. Black walnut is known for its highly valuable lumber, which is used for finished products such as furniture, musical instruments and gun stocks. There are approximately 18.5 million black walnut trees in Wisconsin, with over 13% of them located in the southeastern part of the state. Wisconsin businesses export over $4 million in black walnut products annually.

(2) Thousand cankers disease was first observed in New Mexico in the 1990's. The disease has spread throughout the western United States, causing dieback and mortality in black walnut trees. In July, 2010, the disease was also confirmed in

the Knoxville, Tennessee area. The Tennessee infestation is the first confirmed infestation east of the Mississippi River, the native range of the black walnut tree.

(3) Thousand cankers disease is currently known to exist in the states of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Tennessee, Utah and Washington. The disease has not yet been found in Wisconsin.

(4) Thousand cankers disease may be spread by the movement of firewood, nursery stock, and unfinished or untreated wood products. It is important to restrict the import of host materials from infested areas, to prevent the disease from being introduced into Wisconsin. The disease, if introduced into Wisconsin, could cause great damage to Wisconsin's economically−important and environmentally important walnut forest resource.

(5) It is important to restrict the import of host materials from infested areas as soon as possible. Without this emergency rule, host materials may be imported into Wisconsin from infested areas without adequate safeguards to prevent the introduction of thousand cankers disease into this state.

(6) It would take over a year to adopt the necessary import restrictions by the normal rulemaking procedure prescribed in ch. 227, Stats. DATCP is therefore adopting this temporary emergency rule under s. 227.24, Stats., pending the adoption of a more "permanent" rule by the normal rulemaking procedures. This temporary emergency rule is necessary to protect the public peace, health, safety and welfare, and to help prevent the introduction of a serious plant disease in this state, pending the adoption of a "permanent" rule by the normal procedure.

Publication Date:	**November 1, 2010**
Effective Dates:	**November 1, 2010 through March 30, 2011**

Children and Families

Safety and Permanence, Chs. DCF 37−59

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

Exemption From Finding of Emergency

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

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

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

Children and Families

Family and Economic Security, Chs. DCF 101−153

EmR1024 — Rule adopted creating **Chapter DCF 110**, relating to transitional jobs for low−income adults.

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:

Initial funding for the transitional jobs demonstration project will come from the Temporary Assistance to Needy Families (TANF) Emergency Contingency Fund under the American Recovery and Reinvestment Act of 2009. Spending for subsidized employment is one of the ways that the state can earn additional federal dollars under the TANF Emergency Contingency Fund. The deadline for earning the additional federal dollars is September 30, 2010.

Publication Date:	**June 30, 2010**
Effective Dates:	**July 1, 2010 through November 27, 2010**
Hearing Date:	**August 5, 2010**

Children and Families

Early Care and Education, Chs. DCF 201−252

EmR1027 — Rule adopted revising **Chapter DCF 201,** relating to child care subsidy program integrity.

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:

The Department of Children and Families has determined that significant disparities currently exist between DCF 201 and the intent of 2009 Wisconsin Acts 28 and 77 regarding Wisconsin Shares program integrity efforts. The recent efforts of the legislature and the department to address child care fraud and program integrity are estimated to save $100 million over the course of the biennium. Currently over $7.1 million of child care provider overpayments have yet to be collected due to the lack of authority to use basic collections practices such as tax intercept, wage levy, and property liens. This rule will permit the department to more aggressively collect on these debts, strengthen the department's ability to further tighten requirements for child care providers wishing to do business with the Wisconsin Shares program, and better enforce the rules of the program. These changes will result in continued fiscal savings as well as ensure better quality child care for the children of Wisconsin.

Publication Date:	**July 9, 2010**
Effective Dates:	**July 9, 2010 through December 5, 2010**
Hearing Date:	**August 6, 2010**

Commerce

Wis. Commercial Building Code, Chs. Comm 60−66

EmR1022 — Rule adopted creating s. **Comm 62.0400 (5)**, relating to no smoking signs.

Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. Implementation of 2009 Wisconsin Act 12, s. 101.123, Stats., is to take effect July 5, 2010.
2. Under the Act, the department is to establish by rule uniform characteristics for no smoking signs.
3. Under the Act, the responsibilities of person in charge of a public conveyance or at a location where smoking is prohibited include the posting of no smoking signs.
4. The department believes that the emergency rules are necessary in order to clarify the minimum no smoking sign characteristics so that persons in charge may fulfill the statutory obligations.

Publication Date:	**June 28, 2010**
Effective Dates:	**July 5, 2010 through December 1, 2010**
Hearing Date:	**July 26, 2010**

Commerce (2)

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

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:	**January 3, 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**
Hearing Date:	**October 13, 2010**

Corrections

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

Finding of Emergency

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

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

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

The purpose of the emergency rule is to implement newly created statutory provisions providing for release of inmates under specified circumstances. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary for a prompt implementation of the legislative mandates concerning the release of inmates meeting established criteria while the permanent rules are being developed.

Publication Date:	**December 31, 2009**
Effective Dates:	**December 31, 2009 through May 29, 2010**
Extension Through:	**September 26, 2010**
Hearing Date:	**February 25, 2010**

Earned Release Review Commission

(Formerly Parole Commission)

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

Finding of Emergency

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

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

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

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

Publication Date:	**December 31, 2009**
Effective Dates:	**December 31, 2009 through May 29, 2010**
Extension Through:	**September 26, 2010**
Hearing Date:	**February 23, 2010**

Government Accountability Board (2)

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

Finding of Emergency

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

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

Publication Date:	**May 20, 2010**
Effective Dates:	**May 20, 2010 through October 16, 2010**
Extension Through:	**December 15, 2010**
Hearing Date:	**August 30, 2010**

2. EmR1035 — Rule adopted to repeal and recreate **Chapter GAB 4**, relating to observers at a polling place or other location where votes are being cast, counted or recounted.

Finding of Emergency

The Government Accountability Board repeals and recreates chapter GAB 4, Election observers, to establish guidelines for election inspectors and observers alike regarding observation by "any member of the public" of the public aspects of the voting process and regarding the conduct of observers at polling places and other locations where observation of the public aspects of the voting process may take place. The Board finds that an emergency exists and that an emergency rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

Pursuant to s. 227.24, Stats., the Government Accountability Board finds that an emergency exists in the Board's May 5, 2008 decision to decline to reaffirm the administrative rule ElBd 4.01 because the rule was inconsistent with the requirements of its enabling statute, s. 7.41, Stats. The statute states that any member of the public is allowed to be present at the polls on Election Day to observe; however, it does not specify standards of conduct by which observers must abide.

The Board further finds that given the public interest in the 2010 General Election, the expected high turnout, the increasing use of observers in the polling place, and the comments of municipal and county clerks regarding the obstacles observers can pose to the orderly conduct of elections, it is necessary to codify standards to regulate the observers' conduct and that the attached rule governing observer conduct must be adopted prior to the General

Election to ensure the public peace and safety with respect to the administration of the fall elections.

Publication Date:	**September 24, 2010**
Effective Dates:	**September 24, 2010 through February 20, 2011**

Insurance (3)

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

Exemption From Finding of Emergency

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

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

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

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

Publication Date:	**October 1, 2009**
Effective Dates:	**October 2, 2009 through October 1, 2010**
Extension Through:	**November 29, 2010**
Hearing Date:	**December 8, 2009**

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

Exemption From Finding of Emergency

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

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

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

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

Publication Date:	**January 7, 2010**
Effective Dates:	**January 8, 2010 through January 7, 2011**
Hearing Date:	**May 5, 2010**

3. EmR1020 — Rule adopted to revise **Chapter Ins 17**, relating to annual injured patients and families compensation fund fees and medical mediation panel fees for the fiscal year beginning July 1, 2010, and may have an effect on 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:

These changes must be in place with an effective date of July 1, 2010 for the new fiscal year assessments. The fiscal year fees were established by the Board of Governors at a meeting on May 18, 2010.

Publication Date:	**June 15, 2010**
Effective Dates:	**June 15, 2010 through November 11, 2010**
Extension Through:	**January 1, 2011**
Hearing Date:	**July 19, 2010**

Military Affairs

EmR1030 — Rule adopted to create **Chapter DMA 1**, relating to military family financial aid.

Exemption From Finding of Emergency

Under 2009 Wisconsin Act 28, section 9136, a Finding of Emergency is not required for this emergency rule. The relevant portion of 2009 Act 28 reads as follows:

2009 Wisconsin Act 28, Section 9136. Nonstatutory provisions; Military Affairs.

(2c) EMERGENCY RULE; MILITARY FAMILY FINANCIAL AID. Using the procedure under section 227.24 of the statutes, the department of military affairs shall promulgate the rules described under section 321.45 (2) of the statutes, as created by this act, for the period before the permanent rules become effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, **the department of military affairs is not required to provide evidence that promulgating a rule under this 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 the rules promulgated under this subsection. [Emphasis added]

Publication Date:	**July 26, 2010**
Effective Dates:	**July 26, 2010 through December 22, 2010**
Hearing Date:	**October 13, 2010**

Natural Resources (6)

Fish, Game, etc., Chs. NR 1—

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

Finding of Emergency

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

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

2. EmR1028 — Rule adopted to amend **s. NR 10.104 (7) (a)**, relating to the use of archery deer hunting licenses.

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. Deer populations are well below goal in much of northeast Wisconsin, causing great concern from hunters and others who value deer. This rule is one of the ways the department is trying to rebuild the populations there. The federal government and state legislature have delegated to the appropriate agencies rule−making authority to control and regulate hunting wild animals. The State of Wisconsin must provide publications describing the regulations for deer hunting to approximately 250,000 archery deer hunters prior to the start of the season. These regulations must be legally in effect prior to printing nearly 1 million copies of the regulations publication. The timeline for the permanent version of this rule will not have it in effect in time for these deadlines.

Publication Date:	**July 8, 2010**
Effective Dates:	**July 8, 2010 through December 4, 2010**
Hearing Date:	**August 30, 2010**

3. EmR1033 — Rule adopted to revise section **NR 10.01 (1),** relating to hunting and the 2010 migratory game bird seasons and waterfowl hunting zones.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule−making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid−August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule−making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date:	**September 1, 2010**
Effective Dates:	**September 1, 2010 through January 28, 2011**
Hearing Date:	**October 26, 2010**

4. EmR1036 — Rule adopted to create **s. 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 Dates:	**October 25 to 29, 2010**

5. EmR1037 — Rule adopted to create **s. NR 27.03 (3) (a)** relating to adding cave bats to Wisconsin's threatened species list.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Wis. Stats., is necessary and justified in establishing rules to protect the public welfare. The proposed rule change seeks to provide protection to Wisconsin cave bat species, which face the imminent threat of white−nose syndrome. White−nose syndrome has spread across 14 states and 2 Canadian provinces in the last 3 years, spreading up to 800 miles per year. Mortality rates of affected bat colonies reach 100%. The disease was located last spring within 225 miles of the Wisconsin's southern boarder and 300 miles from the northern boarder. Because the known dispersal distance of the little brown bat is 280 miles, an affected cave is now located within the dispersal range of Wisconsin little brown bats. Listing the cave bat species before white−nose syndrome has been detected in Wisconsin will allow the Department time to work collaboratively with stakeholders to ensure that appropriate conservation measures are developed and in place

when white−nose syndrome is first detected. Because of the speed of white−nose syndrome, the Department would not have time to develop appropriate conservation measures if normal rule−making procedures were used and listing was delayed until after white−nose syndrome was detected in Wisconsin. Based on the current location and known rate of spread of the disease, we anticipate the presence of white−nose syndrome in Wisconsin as early as January 2011.

Publication Date:	**September 29, 2010**
Effective Dates:	**September 29, 2010 through February 25, 2011**
Hearing Dates:	**October 25 to 29, 2010**

6. EmR1039 — Rule adopted to create **s. 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**

(See Notice Register 658, October 31, 2010)

Public Instruction (2)

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

Finding of Emergency

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

Publication Date:	**June 1, 2010**
Effective Dates:	**June 1, 2010 through October 28, 2010**
Extension Through:	**December 27, 2010**
Hearing Date:	**July 29, 2010**

2. EmR1023 — Rule adopted creating **Chapter PI 43**, relating to education reform.

Finding of Emergency

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

2009 Wisconsin Act 215 requires the state superintendent to promulgate rules establishing criteria and procedures for determining whether a school or school district is in need of improvement and whether a school is among the lowest performing 5 percent of all public schools in the state. The Act became effective May 14, 2010 and review by the various interest groups was completed June 18, 2010. Rules must be in place as soon as possible to establish identification criteria prior to the upcoming school year.

Publication Date:	**June 28, 2010**
Effective Dates:	**June 28, 2010 through November 24, 2010**
Extension Through:	**January 23, 2011**
Hearing Date:	**July 27, 2010**

Regulation and Licensing (4)

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

Exemption From Finding of Emergency

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

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

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

Exemption From Finding of Emergency

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

emergency rules will remain in effect until the date on which the final rules take effect.

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

3. EmR1031 — Rule adopted revising **Chapters RL 110 to 116**, relating to the regulation of professional boxing contests.

Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare.

Publication Date:	**August 25, 2010**
Effective Dates:	**September 1, 2010 through January 28, 2011**
Hearing Date:	**September 20, 2010**

4. EmR1032 — Rule adopted creating **Chapters RL 192 to 196**, relating to the regulation of mixed martial arts sporting events.

Exemption From Finding of Emergency

The Department of Regulation and Licensing, pursuant to 2009 Wisconsin Act 111, is not required to provide evidence that an emergency exists nor provide evidence that promulgating a rule is necessary for the preservation of the public peace, health, safety, or welfare.

Publication Date:	**August 26, 2010**
Effective Dates:	**September 1, 2010 through January 28, 2011**
Hearing Date:	**September 20, 2010**

Technical College System Board

EmR1025 — Rule adopted to amend **Chapter TCS 17**, relating to training program grant funds.

Finding of Emergency

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

In May 2010, the Wisconsin C.O.R.E. Jobs Act provided an additional $1 million GPR for the training program grants authorized in Wis. Stats. §§ 20.292 (1) (eh) and 38.41. These funds were provided to address a critical need of Wisconsin employers for skills training and education necessary to protect the state's economic vitality and health, with a special emphasis on advanced manufacturing and welding.

The WTCS Board is required to award these funds by June 30, 2011, the end of the current 2009−11 biennium. In addition, s. TCS 17.06 (1), Wis. Adm. Code, requires that district boards or employers receiving skills training or education under the grant shall contribute matching funds, other than in−kind matching funds, equal to at least 25% of total approved project costs.

Due to the sustained decline in economic conditions and reduction in business revenues, technical college districts report that employers are withdrawing participation in approved training grants because of an inability to fund the 25% match. Therefore, to ensure that business and incumbent workers in need of skills training and other education may access these services and that appropriated funds are distributed to technical college districts for this purpose before the end of the fiscal year, emergency administrative rules eliminating the 25% match requirement must be established immediately.

Publication Date:	**July 2, 2010**
Effective Dates:	**July 2, 2010 through November 28, 2010**
Hearing Date:	**September 28, 2010**

Transportation

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

Finding of Emergency

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

Publication Date:	**June 1, 2010**
Effective Dates:	**June 1, 2010 through October 28, 2010**
Extension Through:	**December 1, 2010**
Hearing Date:	**June 24, 2010**

Scope Statements

Agriculture, Trade and Consumer Protection

Subject

Revises Chapter ATCP 30 to renumber and reorganize this rule, relating to atrazine pesticide applications.

Objective of the Rule

Regulate the use of atrazine pesticides to protect groundwater and assure compliance with Wisconsin's Groundwater Law. Update current rule to reflect groundwater−sampling results related to atrazine obtained during the past year. Reorganize current rule to accommodate any new or expanded prohibition area (PA), and update all maps currently found in Appendix A of the rule using technology that was not available when the original rule was written.

Policy Analysis

DATCP must regulate the use of pesticides to assure compliance with groundwater standards under ch. 160, Stats. Groundwater standards are established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code. DNR has established a groundwater enforcement standard of 3 µg/liter for atrazine and its chlorinated metabolites.

DATCP must prohibit atrazine uses that result in groundwater contamination levels that exceed the DNR enforcement standard under s. 160.25, Stats. DATCP must prohibit atrazine use in the area where groundwater contamination has occurred unless DATCP determines to a reasonable certainty, based on the greater weight of credible evidence, that alternative measures will achieve compliance with the DNR enforcement standard.

Currently, under ch. ATCP 30, Wis. Adm. Code, the use of atrazine is prohibited in 101 PAs (approximately 1,200,000 acres), including large portions of the Lower Wisconsin River Valley, Dane County and Columbia County. The current rules also restrict atrazine use rates and handling practices, including the timing of applications on a statewide basis. The statewide restrictions are designed to minimize the potential for groundwater contamination, as required under s. 160.25, Stats.

Over the next year, DATCP may identify additional wells containing atrazine and its chlorinated metabolites at and above the current DNR enforcement standard. In order to comply with ch. 160, Stats., DATCP must take further action to prohibit or regulate atrazine use in the areas where these wells are located. DATCP proposes to amend ch. ATCP 30, Wis. Adm. Code to add PAs or take other appropriate regulatory action in response to any new groundwater findings.

Policy Alternatives:

No Change. If DATCP takes no action, current rules will remain in effect. However, DATCP would take no new regulatory action in response to new groundwater findings obtained this year. This would not adequately protect groundwater in the newly discovered contaminated areas, nor would it meet DATCP's statutory obligations.

Statutory Alternatives:

None at this time.

Statutory Authority

DATCP proposes to revise Chapter ATCP 30, Wis. Adm. Code, under authority of ss. 93.07, 94.69, and 160.19 through 160.25, Stats.

Comparison with Federal Regulations

Pesticides and pesticide labels must be registered with the federal Environmental Protection Agency ("EPA"). Persons may not use pesticides in a manner inconsistent with the federal label.

Entities Affected by the Rule

Residents whose private wells are located in the proposed or expanded PA would be affected by the proposed rule. Atrazine users in a new or expanded PA would be affected by the proposed rule. Dealers, distributors and manufacturers of atrazine who service areas of proposed expanded PAs would be affected by a reduction in the sales of atrazine. Commercial application services would be required to know where all the atrazine PAs are located to avoid illegal applications. The proposed action is not expected to have a measurable effect on consumer food costs, specifically on corn−derived products.

Estimate of Time Needed to Develop the Rule

DATCP estimates that it will use approximately 0.5 FTE staff to develop this rule. This includes investigation, drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

DATCP Board Authorization

DATCP may not begin drafting this rule until the Board of Agriculture, Trade and Consumer Protection (Board) approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. If the Board takes no action on the scope statement within 30 days after the scope statement is presented to the Board, the scope statement is considered approved. Before DATCP holds public hearings on this rule, the Board must approve the hearing draft. The Board must also approve the final draft rule before DATCP adopts the rule.

Insurance

Subject

Revises sections Ins 17.35 (4) and 17.50 (2) (g), Wis. Adm. Code, relating to primary policy deductibles and the definition of self−insured.

Objective of the Rule

To consider establishing a limitation of the amount of indemnity that may be included in a primary medical malpractice policy as a deductible for purposes of Chapter 655 Wis. Stat., and to clarify the definition of a self−insured plan.

Policy Analysis

Currently s. Ins. 17.35, Wis. Adm. Code, states that a policy may include a deductible, but does not place any limitations on the amount of the indemnity which may be applied toward the deductible. The current rule is silent on the application of a deductible towards indemnity versus costs within the insurance contract. This may result in a deductible endorsement being misapplied to other coverages and policy provisions contrary to requirements of by Chapter 655 Wis. Stat.

Secondly, s. Ins. 17.50 (2)(g), Wis. Adm. Code, provides a definition for a self−insured plan. This rule would add clarification as to the relationship between a self−insured plan and the use of deductibles in an insurance contract.

Statutory Authority

The statutory authority for this rule is ss. 601.41 and 655.004, Wis. Stat.

Comparison with Federal Regulations

There is no existing proposed federal regulation addressing any medical malpractice fund like the Wisconsin Injured Patients and Families Compensation Fund.

Entities Affected by the Rule

This rule may affect the medical malpractice insurance carriers writing coverage for health care providers subject to Chapter 655, Wis. Stat., and the health care providers who purchase primary insurance policies that include a deductible endorsement.

Estimate of Time Needed to Develop the Rule

100 hours estimated state employee time to promulgate this rule; other resources will include the review and recommendation of the Injured Patients and Families Compensation Fund Board of Governors and its Legal Committee.

Regulation and Licensing

Subject

Revises Chapters PT 1−9 to reflect changes in 2009 Wisconsin Act 149 and to make other minor clarifications and corrections as necessary.

Objective of the Rule

2009 Wisconsin Act 149 changed the name of the Board that regulates physical therapists and physical therapist assistants from the Physical Therapists Affiliated Credentialing Board to the Physical Therapy Examining Board. The Board's rules, Wis. Admin. Code §PT 1 – §PT 9, need to be updated so they are consistent with the statute changes. The Board will also use this opportunity to revise, correct and clarify its rules where needed.

Policy Analysis

No major policy changes are intended by this rule.

Statutory Authority

Statutes authorizing promulgation: Wis. Stat. §§. 15.08 (5) (b), 227.11 (2), 448.527, 448.53 (2), and 448.55 (3), 448.565, 448.567.

Comparison with Federal Regulations

None.

Entities Affected by the Rule

Physical therapists, physical therapist assistants, the Physical Therapy Board and the Department of Regulation and Licensing.

Estimate of Time Needed to Develop the Rule

150 hours.

Submittal of Rules to Legislative Council Clearinghouse

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

Corrections
CR 10−126

On October 29, 2010, the Department of Corrections submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order repeals and recreates Chapter DOC 328 relating to offender field supervision.

Agency Procedure for Promulgation

A public hearing has been scheduled for November 30, 2010.

Contact Information

Kathryn R. Anderson, Chief Legal Counsel
Department of Corrections
3099 East Washington Avenue
P.O. Box 7925
Madison, WI 53707−7925
Phone: (608) 240−5049
Email: Kathryn.Anderson@wisconsin.gov

Corrections
CR 10−125

On October 29, 2010, the Department of Corrections submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order repeals and recreates Chapter DOC 331 relating to the revocation of probation, parole, or extended supervision.

Agency Procedure for Promulgation

A public hearing has been scheduled for November 30, 2010.

Contact Information

Kathryn R. Anderson, Chief Legal Counsel
Department of Corrections
3099 East Washington Avenue
P.O. Box 7925
Madison, WI 53707−7925
Phone: (608) 240−5049
Email: Kathryn.Anderson@wisconsin.gov

Natural Resources
Fish, Game, etc., Chs. NR 1—
CR 10−127

(DNR # CF−28−09)

On November 1, 2010 the Department of Natural Resources submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter NR 51, relating to the administration of stewardship grants.

Agency Procedure for Promulgation

The Department's Bureau of Community Financial Assistance is primarily responsible for promulgation of the rule. A public hearing is required and will be held on December 1, 2010.

Contact Information

Department of Natural Resources
Amy Bradley
Bureau of Community Financial Assistance
P.O. Box 7921
101 S. Webster Street
Madison, WI 53707−7921
Phone: (608) 267−0497

Public Service Commission
CR 10−124

(PSC # 1−AC−214)

On October 28, 2010, the Public Service Commission of Wisconsin submitted a proposed rule−making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order revises Chapter PSC 135 relating to natural gas pipeline safety, including updates to the state additions to the pipeline safety code.

Agency Procedure for Promulgation

The Commission's Division of Gas and Energy is primarily responsible for promulgation of the rule. A public hearing has been scheduled for December 7, 2010.

Contact Information

Tom Stemrich, Program Manager for Pipeline Safety
Phone: (608) 266−2800
Email: Tom.Stemrich@wisconsin.gov

Rule−Making Notices

Notice of Hearing

Corrections

CR 10−125

NOTICE IS HEREBY GIVEN that pursuant to section 227.11(2), Stats., the Department of Corrections will hold public hearings to consider a proposed permanent rule revising Chapter DOC 331, relating to the revocation of probation, parole, or extended supervision.

Hearing Information

The Department of Corrections will hold public hearings at the times and places shown below:

Date and Time:	Location:
November 30, 2010 Tuesday 10:00am	State Office Building Conference Room 116 819 North 6th Street Milwaukee, WI 53203
November 30, 2010 Tuesday 2:30pm	Dept. of Administration St. Croix Conference Room 1st floor 101 East Wilson Street Madison, WI 53703

It should be noted that the Department of Corrections will also be holding public hearings on the same date and at the same times and places to consider proposed permanent rule DOC 328, relating to offender field supervision. There is a separate Notice of Hearing being published for DOC 328.

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 **November 23, 2010**.

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, **December 10, 2010**. 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 the Department of Corrections

Statute(s) interpreted

Sections 302.11, 302.113, 302.114, 302.335, 304.02, 304.06, 961.47, 971.17, and 973.10, Stats.

Statutory authority

Section 227.11, Stats.

Explanation of statutory authority

The Department of Corrections is responsible for the supervision of offenders who are on probation, parole, or extended supervision. As part of its responsibility of supervising offenders, the department may initiate revocation procedures for those offenders who violate the rules or conditions of community supervision. This chapter addresses revocation procedures.

Related statute(s) or rule(s)

Chapter 328, community supervision of offenders

Plain language analysis

1. Reorganizes and renumbers the chapter.
2. Updates terminology, including references to extended supervision.
3. Creates definitions for the terms: magistrate and reviewing authority.
4. Clarifies the investigatory process the department follows when an offender is believed to have violated the conditions or rules of supervision.
5. Creates a section requiring notice to an offender for whom revocation of community supervision is being recommended following investigation into alleged violations of the conditions or rules of supervision.
6. Clarifies the provision regarding the process for preliminary hearing.
7. Creates a provision which states that the final revocation hearing is conducted by the division of hearings and appeal in the department of administration.
8. Creates a provision which clarifies the process to be followed when an offender waives his or her right to a revocation hearing.
9. Clarifies the process for termination of revocation procedures.
10. Clarifies the impact of concurrent criminal prosecution on revocation procedures.
11. Clarifies the special revocation procedures for an offender committed under s. 961.47, Stats.
12. Clarifies the provision addressing harmless error.
13. Clarifies the procedure to be followed for determining good time forfeiture, reincarceration or reconfinement time.
14. Incorporates the provision addressing reincarceration into the provision which addresses the procedure for determining good time forfeiture and reconfinement time.
15. Moves the provision which addresses tolled time to chapter DOC 328.
16. Moves the provision which addresses reinstatement to chapter DOC 328.
17. Repeals chapter DOC 331 appendix.

Comparison with federal regulations

There are no federal regulations which address the activities proposed to be regulated by the proposed rule.

Comparison with rules in surrounding states

Illinois

Definitions: The Illinois Administrative Code does not include specific definitions for parole, probation, or extended supervision revocation. However, the code uses the terms "probation" and "parole."

Violation Determination: Unlike Wisconsin's parole revocation determination procedure, 20 Ill. Adm. Code 1610.140 does not include a pre−revocation investigation and discussion procedure as outlined in DOC 331.05. Illinois also lacks the specific alternatives to revocation enumerated in DOC 331.03(2), including a review of the rules of supervision, formal and informal counseling sessions, formal and informal warnings, or other alternatives to revocation. In contrast to Wisconsin, if the panel determines that a parole violation has occurred, it may either order that parole be continued with or without modifying or enlarging the conditions of the parole agreement or parole the offender to a halfway house.

Hearing Procedure: Similar to the preliminary hearing procedure in Wisconsin, pursuant to 20 Ill. Adm. Code 1610.140(a), a parolee may appear at the hearing and speak in his own behalf and may bring letters, documents, or individuals who can give relevant information to the hearing officer. In Illinois, however, on request of the parolee, persons who have given adverse information on which parole revocation is to be based shall be made available for questioning in his presence. If the hearing officer determines that the informant would be subjected to risk or harm if his identity were disclosed, he need not be subjected to confrontation and cross−examination. The Illinois Code also states that he hearing officer shall not be bound by strict rules of evidence

20 Ill. Adm. Code 1610.140(c) dictates that an offender has the right to counsel at the preliminary hearing and revocation hearing. In contrast to Illinois, the right to counsel at such hearings in Wisconsin is not absolute. As stated in DOC 331.05(7) the magistrate presiding over the hearing may postpone the hearing to permit representation by an attorney if the offender, after being informed of his or her right to representation, requests an attorney. The request must be based on a timely and plausible claim that the offender did not commit the alleged violation, and the magistrate must conclude either that the complexity of the issues will make it difficult for the offender to present his or her case or that the offender is otherwise not capable of speaking effectively for himself or herself.

20 Ill. Adm. Code 1610.140(f) includes a uniquely detailed explanation of the subpoena process for revocation hearings that DOC 331 lacks. Under this section, the Prisoner Review Board or parolee may request by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under investigation or hearing. The attendance of witnesses and the production of documentary evidence may be required from any place in the state to a hearing location within 150 miles of the place where the violation is alleged to have occurred. Witnesses summoned by subpoena are required to be paid the same fees and mileage that are paid witnesses in the circuit courts of the state. Failure to obey such an order may be punished by that court as a contempt of court.

Under DOC 331.08 a supervisor may recommend to the regional chief that revocation proceedings be terminated at any time before the administrative law judge's decision is issued. The regional chief shall determine if there is sufficient basis for terminating the revocation proceedings.

DOC 331.09 makes clear that revocation actions may proceed regardless of any concurrent prosecution of the offender for the conduct underlying the alleged violation. An acquittal in a criminal proceeding for an offender's conduct underlying an alleged violation shall not preclude revocation of that offender's supervision for that same or similar conduct.

Sentence Calculation: Unlike in Wisconsin, Illinois includes a specific provision that offenders adjudicated under the code in effect prior to February 1, 1978 are recommitted for that portion of the imposed maximum term of imprisonment or confinement which had not been served at the time of parole, and, in addition, the parole term less the time elapsed between the parole of the person and the commission of the violation for which parole was revoked, less "good time." Offenders are given credit against the term of recommitment for time spent in custody since parole began which has not been credited against another sentence or period of confinement. If an offender violates mandatory supervised release, he will be reconfined for the unserved portion of the mandatory supervised release period, plus any good time (not to exceed one year) revoked on account of the violation.

In Wisconsin, reincarceration hearings apply to offenders who, between June 1, 1984, and December 30, 1999 committed the crime for which they were sentenced to a period of incarceration and to any other offender who chose to have 1983 Wis. Act 528 apply, except offenders sentenced under s. 973.01. Reconfinement hearings apply to offenders who, on or after December 31, 1999, committed the crime for which they received a bifurcated sentence under s. 973.01. Moreover, DOC 331 states specifically that the offender is entitled to a hearing under sub. 1 (a) (b) or (c) to determine the amount of good time to be forfeited, or the amount of reincarceration or reconfinement time to be served.

Finally, DOC 331.05(9) includes detailed provisions regarding the requirement of and procedure for detention pending a final hearing, while the Illinois Code does not.

Iowa

Definitions: Iowa's Administrative Code does not include specific definitions in connection with parole, probation, or extended supervision revocation. Many of the requirements and procedures in connection with parole violations are enumerated in the Iowa Annotated Statutes, Chapter 908.

Violation Determination: Pursuant to 201−45.4(1), the district department may at any time report violations of the conditions of parole to the board of parole. Within 10 calendar days of receipt of knowledge of the commission of certain violations, the supervising officer shall make written report to the board of parole of the violations. The report shall include a recommendation or revoke parole or continue the person on parole. When the subject of the report is the commission of a new offense, the supervising officer may withhold recommendation until disposition of the charges in district court. The violations include violation of any federal or state law (simple misdemeanors need not be reported), any violent or assaultive conduct, possession, control, or use of any firearms, imitation firearm, explosives, or weapons as defined in federal or state statutes, possession, continual or problem use, transportation or distribution of any narcotic or other controlled substance, or repeated excessive use of alcohol by the parolee, a parolee whose whereabouts are unknown and

has been unavailable for contact for 30 days, or reliable information has been received indicating that the parolee is taking flight or absconding, any behavior indicating the parolee may be suffering from a mental disorder which impairs the parolee's ability to function in the community or which makes the parolee a danger to self or others when the mental disorder cannot be adequately treated while in the community, or other conduct or pattern of conduct in violation of the conditions of parole deemed sufficiently serious by the parole officer. The parole officer or supervisor is authorized to dispose of any other parolee misconduct not required to be reported above.

The Iowa Annotated Statutes, Chapter 908.1 states that a parole officer who has probable cause to believe that a person released on parole has violated the parole plan or the conditions of parole may arrest such person, or the parole officer may make a complaint before a magistrate regarding the violation. If it appears from the complaint or from affidavits filed with it that there is probable cause to believe that the offender has violated the parole plan or the terms of parole, the magistrate shall issue a warrant for the arrest of such person. Moreover, if a parole officer has newly discovered evidence which indicates that a person released on parole should not have been granted parole originally, the officer must present the evidence to the board of parole, and the board may issue an order to rescind the parole.

Iowa law includes the specific provision that if the court revokes the probation of a defendant who received a deferred judgment and imposes a fine, the court shall reduce the amount of the fine by an amount equal to the amount of the civil penalty previously assessed against the defendant pursuant to section 907.14. However, the court shall assess any required surcharge, court cost, or fee upon the total amount of the fine prior to reduction pursuant to this subsection.

Hearing Procedure: Section 908.3 of the Iowa Compiled Statutes makes clear that parole revocation hearings must be held in any county in the same judicial district in which the alleged parole violator had the initial appearance or in the county from which the warrant for the arrest of the alleged parole violator was issued. Moreover, the code specifically requires that such a hearing be conducted by an administrative parole judge who is an attorney. DOC 331 does not include these specific requirements.

Parole violators in Iowa have the right to counsel at parole revocation hearings, pursuant to Section *908.2*. However, similar to Wisconsin, the following circumstances must apply: 1) the alleged parole violator lacks skill or education and would have difficulty presenting the alleged parole violator's case, particularly if the proceeding would require the cross−examination of witnesses or would require the submission or examination of complex documentary evidence 2) the alleged parole violator has a colorable claim the alleged violation did not occur, or there are substantial reasons that justify or mitigate the violation and make any revocation inappropriate under the circumstances.

Under Iowa law, a contract attorney with the state public defender may be appointed to represent the alleged parole violator. If a contract attorney is unavailable, an attorney who has agreed to provide these services may be appointed. The appointed attorney shall apply to the state public defender for payment in the manner prescribed by the state public defender. DOC 331 does not include this specific provision regarding appointed counsel.

As in Wisconsin, the Iowa Code allows offenders the right to appeal the revocation of their parole. On appeal or review of the administrative parole judge's decision, the board panel has all the power which it would have in initially making the revocation hearing decision.

Sentence Calculation: In Iowa, if an offender violates his parole by committing a felony, his term of imprisonment as a parole violator is the same as that provided in cases of revocation of parole for violation of the conditions of parole. The new sentence shall be served consecutively with the term imposed for the parole violation, unless a concurrent term of imprisonment is ordered by the court. Similarly, DOC 331.09 provides that any parole revocation actions may proceed regardless of any concurrent prosecution of the offender for the conduct underlying the alleged violation. An acquittal in a criminal proceeding for an offender's conduct underlying an alleged violation does not preclude revocation of that offender's supervision for that same or similar conduct.

In Iowa, if a violation of parole is established, the administrative parole judge has discretion to continue the parole with or without any modification of the conditions of parole. The judge may revoke the parole and require the parolee to serve the sentence originally imposed, or may revoke the parole and reinstate the parolee's work release status.

DOC 331.13 differs slightly from the above. Under the section, an offender's parole agent will recommend a specific period of reincarceration in terms of days, months or years. In making the recommendation, the agent considers the nature and severity of the original offense, the offender's institution conduct record, the offender's conduct and behavior while on supervision, the amount of time left before mandatory release if the offender is a discretionary release parolee, the amount of time consistent with the goals and objectives of supervision under DOC 328, the amount of time necessary to protect the public from the offender's further criminal activity, to prevent depreciation of the seriousness of the violation or to provide a confined correctional treatment setting, and other mitigating or aggravating circumstances.

Michigan

Definitions: Michigan includes some specific definitions in R 791 which differ from Wisconsin's. Pursuant to R 791.7740 "arrest" means either "the placement of a parolee in custody solely for a parole violation" or "the retention in custody of a parolee who has been held on a criminal charge and who has posted bond on that charge and is now held solely as a parole violator." The provisions of the Wisconsin Administrative Code regarding parole, probation, and extended supervision do not define the term arrest. However, the term "physical custody," used in a similar manner, is defined as "actual custody of the person in the absence of a court order granting custody to the physical custodian."

Violation Determination: Under R 791.9930, a probation agent shall petition the sentencing court for a probation revocation hearing when instructed to do so by the court or when the agent believes that revocation is necessary. Such a petition must contain a statement of the specific condition allegedly violated and a brief description of the circumstances of the alleged violation. The probation agent must provide the probationer with a copy of the petition not less than 24 hours before the scheduled hearing. The probation agent shall file a probation violation report with the sentencing court within a reasonable time before the hearing. The report must contain a full description of the alleged violation and the

circumstances surrounding it and a summary of the probationer's development and adjustment while on probation. DOC 331.04 requires that a parole violation notice contain more detailed information, including the amount of time recommended and available for good time forfeiture, reincarceration, or reconfinement. Moreover, it only requires that the offender be provided written notice that the department has recommended revocation within a "reasonable time" after the violation determination.

Hearing Procedure: Similar to Wisconsin's qualified right of representation, Iowa Administrative Code R 791.7745 provides that the offender has the right to be represented by counsel at a preliminary revocation hearing as long as 1) the offender requests counsel not less than 24 hours before the hearing, and the parolee has made a claim of innocence which is plausible but may be difficult to prove, 2) there might be substantial reasons which justify or mitigate the violation, which make revocation inappropriate, and which are complex or otherwise difficult to present or 3) the accused is mentally unable to properly present a defense. In all cases where a request for counsel is denied, the grounds for refusal shall be stated in the written report of the hearing.

R 791.7740(2) specifically states that a parolee is being held on a criminal charge which is also the basis for an alleged parole violation, the preliminary examination on the criminal charge may be substituted for the preliminary parole revocation hearing. If the parolee is bound over on the criminal charge, probable cause must be established to show that the conditions of parole have been violated. If the preliminary examination is waived or the parolee is not bound over on the criminal charge, a preliminary parole revocation hearing may be held unless that hearing is waived by the parolee. Pursuant to DOC 331.09, any revocation actions may proceed regardless of any concurrent prosecution of the offender for the conduct underlying the alleged violation. A criminal acquittal for an offender's conduct underlying an alleged violation does not preclude revocation of that offender's supervision for that same or similar conduct.

Like Wisconsin's, Iowa's preliminary hearing procedures under R 791.7750 allow an offender to waive a preliminary hearing if he or she wishes. DOC 331 includes two circumstances not recognized in Iowa in which a preliminary hearing is not required: 1) the offender has given and signed a written statement which admits a violation, 2) there has been a finding of probable cause in a felony matter and the offender is bound over for trial for the same or similar conduct, 3) there has been an adjudication of guilt by a court for the same or similar conduct, 4) the offender is not being held in custody under the department's authority, 5) there has been a finding of probable cause for the same or similar conduct by a court or magistrate in another state.

Unlike Wisconsin and neighboring states, the Michigan Code does not include provisions responsive to the calculation of reincarceration terms following a parole violation.

Minnesota

Definitions: Minnesota's Administrative Code does not include specific definitions in connection with parole, probation, or extended supervision revocation

Violation Determination: As in Wisconsin, offenders may admit the alleged violations any time prior to the hearing. The admission must be in writing. However, Minnesota also requires that the offender must have been notified of the consequences of their admission, including the possibility that they may be returned to a correctional facility for a term of imprisonment specified by the executive officer of hearings and release or a district supervisor.

Hearing Procedure: Minnesota's parole revocation hearing procedure under 2940.4300 is not as detailed as Wisconsin's. Unlike DOC 331, the Minnesota Code specifies that the revocation hearing shall be held near the site of the alleged violation, and conducted by the executive officer of hearings and release or a district supervisor who does not directly supervise the supervising agent alleging the violation. Indeed, in Minnesota, all conditions of parole or supervised release are imposed by the executive officer of hearings and release.

Similarly, Section 2940.0700 of the Minnesota Code specifically provides that all needs assessments, program and projected release plans must be in writing and the central office file copy must be forwarded to the hearings and release unit for informational purposes.

Sentence Calculation: As in Wisconsin, Minnesota's Administrative Code Section 2940.2700 provides that offenders on parole or supervised release may request that the standard or special conditions of release be modified at any time during their term of release. This request must be made in writing through their supervising agent. The agent then submits the request and the supervising agent's recommendation to the hearings and release unit within ten days of its receipt. The executive officer of hearings and release shall review the request and respond in writing within 30 days of the receipt of the request for the modification of the standard or special conditions of release.

The executive officer of hearings and release may authorize the supervising agent to modify the standard or special conditions of release or cause the offender to be brought before the executive officer of hearings and release for a review of the matter of modification. Any modification of the standard or special conditions of must be in writing and executed with the same formality as the original conditions.

Unlike Wisconsin and neighboring states, the Minnesota Code does not include provisions responsive to the calculation of reincarceration terms following a parole violation.

Summary of 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.

Any analysis and supporting documents used to determine effect on small businesses

Not applicable.

Effect On Small Businesses

Not applicable.

Fiscal Estimate

State fiscal effect

None.

Local government fiscal effect

None.

Text Of Rule

SECTION 1. DOC 331 is repealed and recreated to read:

Chapter DOC 331

PROBATION, PAROLE, OR EXTENDED SUPERVISION REVOCATION PROCEDURES

DOC 331.01 Authority and applicability. (1) These rules are promulgated under the authority of s. 227.11, Stats. They interpret ss. 302.11; 302.113, 302.114, 302.335, 304.02, 304.06, 961.47, 971.17, and 973.10, 973.125 Stats.

(2) This chapter applies to offenders on probation, parole, and extended supervision in the legal custody of the department.

DOC 331.02 Definitions. (1) "Magistrate" means a supervisor or supervisor's designee who has not been directly involved in the decision to initiate proceedings to revoke the offender's supervision.

(2) "Reviewing authority" means the division of hearings and appeals in the department of administration, upon proper notice and hearing, or the department of corrections, if the offender waives a hearing.

(3) The definitions under s. DOC 328.03 apply to this chapter.

DOC 331.03 Violation of supervision. (1) INVESTIGATION. The department shall investigate the facts underlying an alleged violation and shall meet with the offender to discuss the allegation within a reasonable period of time after becoming aware of the allegation.

(2) RECOMMENDATION. After investigation and discussion under sub. (1), the agent and supervisor shall do one of the following:

(a) Take no action because the allegation is unfounded.

(b) Resolve alleged violations by any of the following:

1. A review of the rules of supervision followed by changes in them where necessary or desirable, including return to court.
2. A formal or informal counseling session with the offender to reemphasize the necessity of compliance with the rules or conditions.
3. An informal or formal warning that further violation may result in a recommendation for revocation.
4. Implement an alternative to revocation.

(c) Recommend revocation for an alleged violation.

DOC 331.04 Notice. Within a reasonable time after the determination under DOC 331.03 (2) (c), the department shall provide the offender with written notice that the department has recommended revocation. The notice shall contain all of the following:

(1) A statement describing the alleged violation and the rule violated.

(2) The offender's hearing rights, including the right to waive the hearing.

(3) The amount of any time available for good time forfeiture, reincarceration, or reconfinement.

(4) The amount of time recommended by the agent for good time forfeiture, reincarceration, or reconfinement.

DOC 331.05 Preliminary hearing. (1) REQUIREMENT. When revocation is initiated, a magistrate shall conduct a preliminary hearing in accordance with this section to determine whether there is probable cause to believe that the offender violated a rule or a condition of supervision.

(2) EXCEPTIONS. A preliminary hearing need not be held if one of the following is true:

(a) The offender waives the right to a preliminary hearing in writing.

(b) The offender has given and signed a written statement which admits a violation.

(c) There has been a finding of probable cause in a felony matter and the offender is bound over for trial for the same or similar conduct.

(d) There has been an adjudication of guilt by a court for the same or similar conduct.

(e) The offender is not being held in custody under the department's authority.

(f) There has been a finding of probable cause for the same or similar conduct by a court or magistrate in another state.

(3) NOTICE OF PRELIMINARY HEARING. Written notice shall be given to the offender and either the offender's attorney or the state public defender. The notice shall include:

(a) The rule or condition that the offender is alleged to have violated.

(b) A statement that the offender has a right to a preliminary hearing to determine if there is probable cause to believe the offender has violated a rule or condition of supervision.

(c) A statement that the offender has the right to waive the preliminary hearing.

(d) A statement that the offender has a qualified right to be represented by an attorney at the preliminary hearing.

(e) A statement that the offender or offender's attorney, if applicable, may review all relevant evidence to be considered at the preliminary hearing, except evidence that is determined to be confidential.

(f) An explanation of the possible consequences of any decision.

(g) An explanation of the offender's rights which shall include all of the following:

1. The right to be present.
2. The right to deny the allegation.
3. The right to present relevant evidence, including witnesses who can give relevant information regarding the violation of the rules or conditions of supervision.
4. The right to receive a written decision stating the reasons for the decision based on the evidence presented.

(4) TIME AND PLACE. The preliminary hearing shall take place as close as feasible to the area of the state in which the alleged violation occurred. It shall take place not sooner than one working day and not later than 5 working days after receipt by the offender of the notice of the preliminary hearing.

(5) QUALIFIED RIGHT TO AN ATTORNEY. If an attorney fails to appear at the preliminary hearing to represent the offender, the magistrate may either proceed with the hearing or postpone the hearing. The hearing shall be postponed to permit representation by an attorney if the offender, after being informed of his or her right to representation, requests an attorney based on a timely and plausible claim that he or she did not commit the alleged

violation and the magistrate concludes either that the complexity of the issues will make it difficult for the offender to present his or her case or that the offender is otherwise not capable of speaking effectively for himself or herself.

(6) DECISION. (a) After the preliminary hearing the magistrate shall issue a written decision stating findings, conclusions and reasons for the decision. The decision shall be based on the evidence presented.

(b) The magistrate shall provide copies to the offender within a reasonable time after the preliminary hearing.

(c) If probable cause was found, the division of hearings and appeals shall be contacted in writing to request the scheduling of a final revocation hearing.

(d) If no probable cause was found the revocation process terminates without prejudice.

(7) DETENTION PENDING FINAL HEARING. (a) When there is a preliminary hearing, the magistrate shall decide if the offender is to be detained pending the outcome of the final hearing. When a preliminary hearing is not required because the case meets one of the criteria under sub. (2), a supervisor shall make the detention decision.

(b) The magistrate shall consider factors that include but are not limited to the following:

1. The offender is believed to be dangerous.

2. The offender is likely to flee.

3. The offender is likely to engage in criminal behavior before the revocation takes place.

4. The offender is likely to engage in an activity that does not comply with the rules and conditions of supervision.

5. The length of the term to be served upon revocation is great.

(c) A detained offender is not eligible for release during working hours or for any other partial release from detention.

(d) The detention decision made pursuant to par. (b) shall remain in effect until one of the following occurs:

1. The decision of the administrative law judge becomes final.

2. The offender is reinstated.

3. The violation warrant is vacated by the department.

(e) If the department requests review of the administrative law judge's decision, the custody decision made pursuant to par. (b) shall remain in effect.

(f) The secretary may alter the custody decision at any time if the public interest warrants it.

(8) REISSUANCE OF NOTICE. (a) If notice of the preliminary hearing is found to be improper and the impropriety in itself results in the dismissal of the revocation proceedings, the department may issue a proper notice and begin the proceedings again.

(b) If a magistrate decides that there is no probable cause to believe the offender committed the violation and later the department learns of additional relevant information regarding the alleged violation, revocation proceedings may be started again with issuance of a new notice for the preliminary hearing.

DOC 331.06 Final revocation hearing. A final revocation hearing of an offender's supervision shall take place in accordance with procedures set forth in ch. HA 2.

DOC 331.07 Waived revocation hearing. (1) An offender may waive in writing the right to revocation hearing.

(2) The agent shall prepare and send the waiver and a record of documents supporting the recommendation for revocation to the secretary for decision within a reasonable period of time.

(3) The secretary shall issue a written decision to the offender, the offender's attorney, if applicable, the agent, and the supervisory staff member who recommended revocation within 10 days of receipt of the recommendation.

(4) The offender may withdraw a waiver prior to the secretary's decision if the offender establishes that it was not knowingly, voluntarily, or intelligently made.

DOC 331.08 Termination of revocation proceedings. (1) A supervisor may recommend to the regional chief that revocation proceedings be terminated at any time before the administrative law judge's decision is issued.

(2) The regional chief shall determine if there is sufficient basis for terminating the revocation proceedings.

DOC 331.09 Concurrent criminal prosecution and acquittal in criminal proceeding. Any revocation actions under this chapter may proceed regardless of any concurrent prosecution of the offender for the conduct underlying the alleged violation. An acquittal in a criminal proceeding for an offender's conduct underlying an alleged violation shall not preclude revocation of that offender's supervision for that same or similar conduct.

DOC 331.10 Records. A summary of all alleged violations, revocation actions, and proceedings under this section against an offender shall be maintained in the offender's record.

DOC 331.11 Special revocation procedures. All offenders under supervision by the department are subject to revocation under ss. DOC 331.03 to 331.10 except for an offender committed under s. 961.47, Stats. For an offender committed under 961.47, stats, an agent shall proceed under s. DOC 331.03 (1) and (2) and shall, upon the approval of a supervisor, notify the committing court of the alleged violation and submit a report to the court within a reasonable time after becoming aware of the alleged violation. The court will decide if the offender shall remain on probation under s.961.47, Stats.

DOC 331.12 Harmless error. The secretary may deem a failure to comply with a requirement under this chapter as harmless error if it does not prejudice a fair proceeding or disposition.

DOC 331.13 Post revocation hearing to determine good time forfeiture, reincarceration or reconfinement time. (1) APPLICABILITY. (a) Good time forfeiture hearings apply to offenders who, before June 1, 1984, committed the crime for which they were sentenced to a period of incarceration in the Wisconsin state prison and chose not to have 1983 Wis. Act 528 apply.

(b) Reincarceration hearings apply to offenders who, between June 1, 1984, and December 30, 1999, committed the crime for which they were sentenced to a period of incarceration in the Wisconsin state prison and to any other offender who chose to have 1983 Wis. Act 528 apply, except offenders sentenced under s. 973.01, Stats.

(c) Reconfinement hearings apply to offenders who, on or after December 31, 1999, committed the crime for which they received a bifurcated sentence under s. 973.01, Stats.

(2) HEARING. The offender is entitled to a hearing under sub. 1 (a) (b) or (c) to determine the amount of good time to

be forfeited, or the amount of reincarceration or reconfinement time to be served.

(3) WAIVER. The offender may waive, in writing, the right to a hearing. The waiver may be withdrawn by the offender prior to the decision if the offender establishes that it was not knowingly, voluntarily, or intelligently made.

(4) AMOUNT OF TIME AVAILABLE. The agent shall notify the reviewing authority of the amount of good time available for forfeiture, or the amount of reincarceration or reconfinement time available.

(5) CRITERIA. (a) The agent shall recommend to the reviewing authority that a specific amount of good time be forfeited under sub. (1) (a), and whether good time should be earned upon the forfeited good time. Under sub. (1) (b) and (c), the agent shall recommend a specific period of reincarceration or reconfinement. The amount of time shall be expressed in terms of days, months or years. The agent shall include the reasons and facts consistent with the criteria listed in par. (b) that support the recommendation.

(b) The following shall be considered by the agent:

1. The nature and severity of the original offense.
2. The offender's institution conduct record.
3. The offender's conduct and behavior while on supervision.
4. The amount of time left before mandatory release if the offender is a discretionary release parolee.
5. The amount of time consistent with the goals and objectives of supervision under ch. DOC 328.
6. The amount of time necessary to protect the public from the offender's further criminal activity, to prevent depreciation of the seriousness of the violation or to provide a confined correctional treatment setting.
7. Other mitigating or aggravating circumstances.

SECTION 2. Repeals DOC 331 appendix.

SECTION 3. 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.

Agency Contact Person

Questions or comments related to this rule may be sent to the following address:

Kathryn R. Anderson, Chief Legal Counsel, Department of Corrections 3099 East Washington Avenue, P.O. Box 7925, Madison, WI 53707−7925 (608) 240−5049; FAX (608) 240−3306 Kathryn.Anderson@Wisconsin.gov

Notice of Hearing

Corrections

CR 10−126

NOTICE IS HEREBY GIVEN that pursuant to section 227.11(2), Stats., and Chapters DOC 950 and 980, Stats., the Department of Corrections will hold public hearings to consider a proposed permanent rule revising Chapter DOC 328, relating to offender field supervision.

Hearing Information

Date and Time:	Location:
November 30, 2010 Tuesday 10:00am	State Office Building Conference Room 116 819 North 6th Street Milwaukee, WI 53203
November 30, 2010 Tuesday 2:30pm	Dept. of Administration St. Croix Conference Room 1st floor 101 East Wilson Street Madison, WI 53703

It should be noted that the Department of Corrections will also be holding public hearings on the same date and at the same times and places to consider proposed permanent rule DOC 331, relating to the revocation of probation, parole, or extended supervision. There is a separate Notice of Hearing being published for DOC 331.

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 **November 23, 2010**.

Appearances at the Hearing and Submission 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, **December 10, 2010**. 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 the Department of Corrections

Statutes interpreted

Sections 165.76, 301.001, 301.03, 301.45, 301.46, 302.11, 302.113, 302.114 302.14, 302.19, 302.31, 302.335, 304.06 (3), 304.072, 304.074, 304.075, 304.12, 304.13, 304.135, 304.137, 304.14, 939.615 941.29, 961.47, 971.17, 972.15, 973.01, 973.04, 973.06, 973.07, 973.08, 973.09, 973.10, 973.155, 973.20, Stats., and chapters 950 and 980, Stats.

Statutory authority

Sections 227.11 (2), 301.03 (3), 304.074, 304.16 (1) (b) 1., and 973.01 (4m), Stats.

Explanation of agency authority

The Department of Corrections is responsible for the supervision in the community of persons who have been convicted of a crime and placed on probation or released from prison to parole or extended supervision.

Related statutes or rules

Chapter DOC 331 (probation, parole, and extended supervision revocation procedure)

Plain language analysis

The rule:

1. Retitles the chapter to Community Supervision of Offenders to recognize that the division may have responsibility for supervising any person regardless of age, who is in the adult correctional system.
2. Reorganizes and renumbers the rule.
3. Updates terminology to include references to extended supervision.
4. Recognizes the department's initiatives towards reentry of inmates into the community in its purpose statement.
5. Eliminates the following definitions: absconding, administrative supervision, client, compact administrator, compact coordinator, compact specialist, field staff or staff, field supervision, high risk supervision, minimum supervision, monitoring, physical custody, referral, TIME system, and transfer.
6. Modifies the following definitions: collateral, conditions, discharge, division, extension, intoxicating substance, offender, region, regional chief, reporting, rules, supervisor, and working day.
7. Creates the following definitions: abscond, advocate, alternative to revocation, bodily harm, body contents search, commitment term or term, community supervision or supervision, contraband, deadly force, extended supervision, financial resources, force, great bodily harm, hearing examiner, incapacitating agent, nondeadly force, pat−down, personal search, school, standard business hours, supervision fees, and tolled time.
8. Updates the recitation of responsibilities of the agent and the offender during the course of community supervision.
9. Removes the rule provision which set forth the minimum contact requirements for maximum, medium, and minimum offenders and the provision for reassessment.
10. Removes the provision in this chapter which stated the possible consequences for a violation of the rules or conditions of supervision.
11. Removes the rule provisions which addressed administrative or minimum supervision of an offender by a vendor. (Section 304.073, Stats., which provided for vendor supervision, was repealed by 2003 Wis. Act 33.)
12. Consolidates the rule provisions concerning payment of supervision fees by an offender.
13. Clarifies the provision concerning an offender's failure to pay his or her financial obligations, whether they are court ordered or a consequence of supervision.
14. Clarifies the provision governing temporary travel out of the state of WI.
15. Removes the provision which addresses intrastate transfer.
16. Simplifies the provision which addresses interstate transfer.
17. Simplifies the provision concerning the department's authority to purchase goods or services for an offender.
18. Renames the complaint process to an administrative review process. Removes the timeframes for offenders filing requests for review and the timeframes for responding to the requests for review.
19. Clarifies the provision which addresses an offender's voluntary return to an institution.
20. Removes the provision which addresses ethics, fraternization, gifts and gratuities.
21. Clarifies the provision addressing contraband.
22. Removes the provision which addresses use of non−prescription controlled substances (medication and alcohol).
23. Simplifies the provision which addresses discharge from supervision.
24. Creates a new provision to address early discharge.
25. Clarifies the provisions which address use of force, mechanical restraints, and incapacitating agents.
26. Creates a new section on the use of firearms or other weapons.
27. Clarifies the provision which addresses search and seizure.
28. Creates a provision to address tolled time.
29. Creates a provision to address reinstatement of supervision.
30. Removes the provision of transporting offenders in custody.
31. Removes the provisions which address presentence investigation reports and recordkeeping.
32. Creates a provision which permits the department to conduct an administrative hearing to determine if an offender should be required to comply with prescribed psychotropic medications as part of his or her supervision. The provision provides for an annual review of the decision.
33. Repeals chapter DOC 328 Appendix.

Summary of and comparison with existing or proposed federal regulations

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

Comparison of similar rules in adjacent states

Illinois

Definitions: Chapter 20 of the Illinois Administrative Code uses the terms "probation" and "parole," while Wisconsin's DOC 328 employs the broader term "community supervision" to encompass "the control and management of offenders on probation, parole, extended supervision or other statuses as authorized by court order or statute."

Supervision Procedures: The Illinois Prisoner Review Board handles orders of parole, conditions of parole, statutory parole, and mandatory release. Chapter 20 states that the Board will not find an offender eligible for parole if:

1) there is a substantial risk that he will not conform to reasonable conditions of parole,
2) his release at that time would depreciate the seriousness of his offense or promote disrespect for the law, or
3) is release would have a substantially adverse effect on institutional discipline. DOC 328 does not include general considerations for parole eligibility, but simply states that after the inmate and institution staff have prepared a proposed release plan, the responsible parole agent will investigate the plan, comment on its appropriateness, and suggest modifications if necessary.

Unlike the Illinois Administrative Code, DOC 328.07 sets forth a schedule of supervision fees for offenders based on

their gross annual income. DOC 328 also includes detailed provisions outlining the criteria for refunds and exemption from supervision fees.

Under 20 Ill. Adm. Code Section 1610.70, an offender or his attorney may initiate a reconsideration of the offender's release date offer. The reviewing members are authorized, based on the hearing record, to modify or reverse an initial decision if 1) the decision is contrary to law or the guidelines governing decision, 2) the reasons given for the decision do not support it, 3) there is not sufficient factual support in the record for the decision, or 4) the length of the release date is disproportionate to like cases or sentences.

In contrast, DOC 328.13 states that offenders in Wisconsin may request administrative review to challenge any decision affecting an offender except those concerning revocation, custody and detention, denial of use or possession of firearms, special conditions or terms of supervision imposed by a court or earned release review commission, or decisions regarding early discharge from the term of supervision. Prior to initiating a request for administrative review the offender shall attempt to resolve the concern with the agent. If the concern is not resolved, the offender may file a written request for administrative review to the agent's supervisor within a reasonable time. The request and subsequent reviews shall be filed utilizing the department's forms. An offender may request a review of the supervisor's decision by the regional chief within a reasonable time. If the concern is not resolved that juncture, the offender may request a final review by the administrator within a reasonable time.

DOC 328.13 also includes a unique provision stating that the Department of Corrections may authorize temporary out−of−state travel when it is consistent with the purpose and goals of the offender's supervision, applicable interstate compact provisions, and applicable civil commitment provisions. An offender shall request and receive written authorization prior to travel out of the state of Wisconsin. Agent approval is required for travel not to exceed 15 days, and supervisory approval is required for travel exceeding 15 days. An authorization for temporary out of state travel shall specify that the offender is responsible for travel costs, reporting as required, returning to the state at any time upon request. Offenders shall be allowed to travel to foreign countries only as authorized by the sentencing court; or upon verification of official military orders from the US Armed Forces or National Guard.

Moreover, DOC 328.15 allows offenders to request a voluntary return to a correctional facility for a period not to exceed one (1) year. Upon return to the institution, the offender shall remain incarcerated until the agreed release date unless the department determines release is appropriate. During the period of incarceration the agent shall maintain contact with the offender and facilitate a release plan.

Parole Release Hearings: The Illinois Code includes detailed provisions regarding parole release hearings. Under Chapter 20, a Parole Release Panel of at least three members of the Board participates in parole release hearings. During the hearing, at least one member of the panel interviews interview the inmate and hear any witnesses. The decision to grant or deny parole requires the action of a panel of at least three members of the Board, while the decision to release on parole requires the affirmative vote of a simple majority of the voting members. DOC 328 includes no such provision.

Unlike DOC 328, the Illinois Code states that the Parole Board is not bound by strict rules of evidence in the conduct of a parole release hearing and will consider all evidence presented, so long as the evidence is not "cumulative, repetitive or inherently unreliable," and so long as it has some relevance to the parole release decision.

Individuals identified as victims, or members of the families of victims of the crime for which the inmate is receiving parole consideration may appear in person before the Parole Release Panel. Other persons who wish to testify as complaining witnesses shall be permitted to appear unless the presiding member determines that they cannot provide relevant information or that their testimony would be repetitive or cumulative. Individuals who wish to appear on behalf of the inmate, in support of the grant of parole, may do so, unless the presiding member determines that their testimony would be irrelevant, repetitive, or cumulative, or unless the potential witness is barred from the institution by the Department of Corrections.

As in Wisconsin, an inmate in Illinois shall be heard, as required by the Unified Code of Corrections, Ill. Rev. Stat. 1983, Chapter 39, par. 1003, if he chooses.

Following the Conference, the Parole Release Panel will vote on the question of granting or denying parole. When the panel votes to deny parole, a rationale will be prepared by at least one member who states the basis for denial, including the primary factors considered. The inmate shall be provided a copy of the Order and rationale within 21 days after the Parole Release Hearing.

Chapter 20 also includes a provision stating that any inmate convicted of murder or whose minimum sentence is 20 years or more under Chapter 39 of the Illinois Revised Statutes in effect prior to February 1, 1978, the Parole Release Panel submits the case to the entire Board at an en banc hearing, at which time a determination will be made as to whether parole will be granted or denied. In addition, the Chairman or a majority of the members of a panel hearing a case upon which a decision has not been rendered may cause that case to be considered at the next scheduled en banc hearing day. Once a case is designated en banc, it will continue to be considered by the full Board unless the Board determines otherwise.

The Illinois Code does not include any provision that reflects the Wisconsin's detailed parole discharge requirements, or the psychotropic medication hearing procedures outlined in DOC 328.28. The Illinois Code does not provide detailed enforcement rules, as does DOC 328.

Iowa

Definitions: The Iowa Administrative Code uses the terms "probation" and "parole." DOC 328 uses the term "community supervision" to encompass "the control and management of offenders on probation, parole, extended supervision or other statuses as authorized by court order or statute."

Supervision Procedures: Pursuant to the Iowa Administrative Code, Section 205−8.1, Iowa's Parole Board evaluates whether there is reasonable probability that an inmate who is eligible for parole or work release can be released without detriment to the community or the inmate. In doing this, the board considers the best interests of society. Section 205−8 states specifically that the board will not grant parole or work release as an award of clemency. DOC 328

does not include these considerations or a mention clemency specifically.

Under IAC 8.2(1), the board will not grant parole to an inmate serving a mandatory minimum sentence. Similarly, the board will not grant work release to an inmate serving a mandatory minimum sentence unless the inmate is within 6 months of completing the mandatory minimum portion of the sentence.

Moreover, the Iowa Administrative Code states specifically that an inmate on patient status will not usually be granted parole or work release. The board may grant parole to an inmate against whom a detainer has been placed by another state. In Iowa, as in Wisconsin, the board may grant parole to another state pursuant to the provisions of the interstate parole and probation compact set forth in Iowa Code chapter 907A.

In contrast to Iowa, DOC 328.07 sets forth a schedule of supervision fees for offenders based on their gross annual income. DOC 328 also includes detailed provisions outlining the criteria for refunds and exemption from supervision fees.

Parole Release Hearings: Unlike DOC 328, 8.6(1) includes detailed provisions regarding parole release hearings. Under this section, the board may review the records of an inmate committed to the custody of the department of corrections and consider the inmate's prospects for parole or work release at any time. The board must notify an inmate only if the inmate is granted parole or work release, except as provided in 8.16(3). The board may interview an inmate committed to the custody of the department of corrections at any time.

Under Iowa law, parole or work release shall be ordered only for the best interest of society and the offender. In order to release an offender on parole, the Board must determine that there is a reasonable probability that the person can be released without detriment to the community or to the person. As in Wisconsin**,** an offender may be paroled to a place outside of Iowa when the board of parole shall determine it to be to the best interest of the state and the prisoner, under such rules as the board of parole may impose.

Section 8.14(1) provides that parole proceedings shall be open to the public except as otherwise necessary or proper. Under this section, inmates who attend parole proceedings are required to conduct themselves in a manner consistent with decorum appropriate for a participant in a public meeting of a governmental body. The inmate will be given an opportunity to make an independent statement to the panel or board at some point during the parole proceeding. The panel or board may limit this statement in any manner as to topic or time. Under the code, specifically subject to this limitation will be persons who have no realistic grounds to believe a parole will be granted, such as those with mandatory minimum sentences, those serving life terms, or those having served short times relative to the severity of their crimes and length of their sentences.

Unlike Wisconsin, 8.14 includes detailed provisions regarding the conduct of spectators at parole hearings. Under this section, spectators must conduct themselves with decorum, may not participate in the parole proceedings, and the number of spectators will be limited by the number of seats provided. Any activity deemed inappropriate by the panel or institutional staff may result in a request by the panel or institutional staff for the offending party or parties to leave. Warnings for inadvertent or minor misconduct may or may not be given the first time it occurs, and any subsequent offending activity will result in a request to leave. Refusal to leave upon request will result in a request by the panel to have the person or persons removed by the institutional staff.

Similarly, broadcasting, televising, recording and photographing are be permitted in the interview room during open sessions of the board or panel, including recesses between sessions if the Department of Corrections permits. However, the panel or board may limit or terminate photographic or electronic media coverage by any or all media participants at any time during the proceedings in the event the panel or board finds that rules in this chapter or additional rules imposed by the institution or department of corrections have been violated. All still photographers and broadcast media personnel are required to be properly attired and maintain decorum appropriate for a public meeting of a governmental body at all times while covering a parole proceeding.

The Iowa Code does not include any provision that reflects the psychotropic medication hearing procedures outlined in DOC 328.28. Similarly, the Iowa Code does not provide detailed enforcement rules for offenders on parole and probation, as does DOC 328, nor does it include specific provisions regarding travel out of state and abroad or voluntary return to an institution.

Pursuant to 45.4(2) a parole officer, with supervisory approval, may arrest a parolee when there is probable cause to believe the parolee has violated conditions of parole which may result in parole revocation. The arresting agent may request temporary detention of the parolee in a local detention facility. A parole officer may also proceed without arrest by filing a complaint with the Iowa board of parole pursuant to Iowa Code section 908.8. When a parolee is arrested the agent shall immediately notify the board of parole. Under 45.4(3), upon receipt of information that a parolee has absconded from supervision, preliminary parole violation information shall immediately be filed with a judge, an associate judge, or a magistrate and a warrant for arrest requested. DOC 328 has similar provisions for the arrest and temporary detention of a parolee, outlined in 328.29. However, Wisconsin includes more detailed provisions for such arrests and requirements for the conduct of correctional staff during such arrests.

Discharge from Parole: Pursuant to 20 IAC 205−13.1, an offender released on parole will be discharged when the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement. However, discharge from parole may be granted earlier, if appropriate. There are some exceptions: a person convicted of a violation of the Iowa Code section 709.3, 709.4, or 709.8 committed on or with a child, or a person serving a sentence under section 902.12, shall not be discharged from parole until the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement.

Wisconsin's discharge requirements differ slightly from Iowa's. Pursuant to DOC 328.16, the Department of Corrections must comply with certain discharge requirements depending on whether the discharged offender is a felon, misdemeanant, or probationer. For felons, the department must issue a certificate of discharge or a certificate of final discharge if the offender has discharged from all felony cases. The offender shall receive a certificate of final discharge under this subdivision shall list the civil rights that have been restored to the offender and the civil rights that have not been

restored to the offender. For misdemeanants, the department notify the offender that their period of supervision has expired. For probationers, the department shall notify the sentencing court that the period of probation supervision has expired.

Pursuant to DOC 328.17(1), the Department of Corrections may grant an offender early discharge when there is a reasonable probability that supervision is no longer necessary for the rehabilitation and treatment of the offender and for the protection of the public. In making this determination, the department will consider whether the goals and objectives of supervision have been satisfied, for offenders on probation, the offender has served at least fifty percent of the term of probation, for offenders on parole, the offender has reached their mandatory release date or has been under supervision for two years.

In Wisconsin, an offender on extended supervision is not eligible for early discharge under this section if convicted of any of the following offenses: Class B felony offenses, or violations of s. 940.03, 940.06, 940.11(1), 940.235, 940.302, 940.31(1), 940.32(3), 941.21, 946.465, 948.03(2)(a), 948.40(4)(a), Stats., or offenses against elderly or vulnerable persons as defined in s. 939.22(20d), Stats., offenses related to ethical government, as defined in s. 939.22(20m), Stats., or offenses related to school safety as defined in s. 939.22(20s). Offenders serving a life sentence are eligible for discharge as provided by s. 973.013(2) Stats. The department may not discharge an offender on lifetime supervision under s. 939.615. Notwithstanding these requirements, the department may grant an early discharge if extraordinary circumstances exist.

Under 205 IAC 9.2−9.3, Iowa has a unique certificate of employability program, the goal of which is to maximize the opportunities for rehabilitation and employability of offenders and provide protection of the community while considering the needs of potential employers. Upon the successful completion of the required programming and receipt of a positive recommendation from the Department of Corrections or community−based corrections in the state of Iowa, participants receive certificates of employability. The board will not issue any certificate of employability unless it is satisfied that the person to whom it is to be granted is an eligible offender, the relief to be granted by the certificate is consistent with the employability of the eligible offender and the relief to be is consistent with the public interest.

In Iowa, when an inmate is discharged, paroled, or placed on work release, the warden or superintendent furnishes the inmate, at state expense, appropriate clothing and transportation to the place in this state indicated in the inmate's discharge, parole, or work release plan. Similarly, as provided in section 904.508, the warden or superintendent will provide the inmate, at state expense or through inmate savings, $100 upon parole release and $50 upon work release.

Michigan

Definitions: Pursuant to Chapter R 791.9901 of the Michigan Administrative Code, "offender" means a person convicted of a felony or misdemeanor. Wisconsin has a more expansive definition of offender: "a person who is committed to the custody of the department for correctional purposes and is under community supervision of the department." Unlike Michigan, Wisconsin's code does not include definitions of probationer, probation agent, or probation plan. Wisconsin has the term "community supervision" which encompasses the control and management of offenders on probation, parole, extended supervision or other statuses as authorized by court order or statute.

Supervision Procedures: Pursuant to R 791.9920, when an offender is placed on probation, the supervising probation agent provides the offender with a copy of the order and informs the offender of the statutory conditions, as well as all of the terms and conditions contained in the order, and the possible consequences of a failure to adhere to the conditions of probation. For the purpose of monitoring the probationer's adjustment while on probation, the probation agent may 1) inquire into the probationer's employment status, including, but not limited to, the probationer's performance on the job, relationships with fellow employees, and relationships with supervisors 2) conduct interviews with probationer, members of the probationer's family, and acquaintances, 3) make other reasonable inquiries to determine whether the objectives of probation are being met. DOC 328.04 includes a similar, but more expansive list of individualized supervision duties, including the responsibility to collect restitution and other court ordered financial obligations, and fees as and to report suspected child abuse cases to the appropriate authorities

In Michigan, if it appears to the probation agent that a modification of the terms or conditions of probation is necessary to achieve the objectives of probation, the agent may petition the sentencing court for a modification of the probation order. The petition must contain a clear statement of the requested modification and the reason for the change. The agent must provide the probationer with a copy of the modified order of probation and shall explain the changes made by the modified order to the probationer.

The Michigan Parole Board considers a variety of factors when deciding if parole is appropriate in a particular case, such as family and community ties, pending charges, and education level. A prisoner being considered for parole shall receive psychological or psychiatric evaluation before the release decision is made if the prisoner has been hospitalized for mental illness within the past two years, has a history of predatory or assaultive sexual offenses, or a history of serious or persistent assaultiveness within the investigation. The board may also consider the prisoner's marital history and prior arrests that did not result in conviction or adjudication of delinquency. However, denial of parole cannot be based solely on either of these factors.

Unlike Michigan, DOC 328.07 sets forth a schedule of supervision fees for offenders based on their gross annual income. DOC 328 also includes detailed provisions outlining the criteria for refunds and exemption from supervision fees.

Parole Release Hearings: Unlike in Wisconsin, parole boards in Michigan are divided into panels comprised of three members each. The boards are charged with making parole release, revocation, and rescission decisions for prisoners serving indeterminate sentences, except for decisions under section 34(4) of Act No. 232 of the Public Acts of 1953, as amended. The decisions specified in this subrule are by a concurrence of the majority of the parole board panel members. Panel decisions are made by a concurrence of the majority of the parole board members.

Unlike Wisconsin, the Michigan Code does not include detailed provisions regarding discharge from parole. Similarly, the Michigan Code does not include any provision that reflects the psychotropic medication hearing procedures outlined in DOC 328.28. The Michigan Code does not provide detailed enforcement rules, as does DOC 328, nor

does it include specific provisions regarding travel out of state and abroad or voluntary return to an institution.

Minnesota

Definitions: The Minnesota Administrative Code employs the terms "probation" and "parole," while Wisconsin uses "community supervision" to encompass the control and management of offenders on probation, parole, extended supervision or other statuses as authorized by court order or statute.

Parole Release Hearings: All needs assessments, programs, and projected release plans must be in writing and the central office file copy must be forwarded to the hearings and release unit for informational purposes. All conditions of parole or supervised release shall be imposed by the executive officer of hearings and release.

Pursuant to the Minnesota Administrative Code, Section 2940.0300, Minnesota established a hearings and release unit to coordinate, monitor, and ensure uniformity and objectivity in the decisions of parole, supervised release, and work release. The commissioner of the unit has delegated to the executive officer of hearings and release the authority to grant parole and work release, to revoke parole, work release, and supervised release, to discharge persons under indeterminate sentences; and to approve the conditions of parole, work release, and supervised release.

Program teams are a unique feature of Minnesota's parole system. Pursuant to Section 2940.0500, each institution has one or more program review teams appointed by the institution superintendent or warden with one member of each team shall be designated as the chair. Program teams perform the following functions with regard to each inmate: 1) develop a needs assessment 2) develop a program plan 3) develop projected release plans 3) develop institutional transfer recommendations 4)develop recommendations for work release and prerelease 4) develop recommendations for work release 5) conduct program plan progress reviews at least once every 12 months 6) modify needs assessment or program plans as required 7) develop conditions of parole or supervised release jointly with the inmate's assigned field agent, and conduct reentry reviews.

Pursuant to 2940.0700, all needs assessments, program, and projected release plans must be in writing and the central office file copy must be forwarded to the hearings and release unit for informational purposes. All conditions of parole or supervised release shall be imposed by the executive officer of hearings and release.

Moreover, 2940.1700 dictates that progress reviews shall be completed annually on all offenders on parole or supervised release status by the supervising agent. Unless the expiration date occurs earlier, offenders on parole status shall be considered for discharge when consistent with public safety.

In Minnesota, the executive officer of hearings has the authority, with the exception of those inmates under life sentences, to grant parole and work release and discharge inmates with indeterminate sentences, approve or modify conditions of parole or supervised release as developed by the program review teams, restructure conditions of parole or supervised release, revoke parole, supervised release, and work release status, issue warrants for the apprehension of parolees, supervised releasees, and work releasees, authorize the extradition of absconders from parole, supervised release, and work release; and issue revocation orders to stop time on parolees, supervised releasees, and work releasees who have absconded and to start the time running on the inmates' sentences.

Unlike Wisconsin, the Minnesota Code does not include detailed provisions regarding discharge from parole. Similarly, the Minnesota Code does not include any provision that reflects the psychotropic medication hearing procedures outlined in DOC 328.28. The Michigan Code does not provide detailed enforcement rules, as does DOC 328, 8, nor does it include specific provisions regarding travel out of state and abroad or voluntary return to an institution.

Summary of the 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.

Any analysis and supporting documents used in determination of effect on small businesses

Not applicable.

Effect On Small Businesses

Not applicable.

Fiscal Estimate

State fiscal effect

None.

Local government fiscal effect

None.

Text Of Rule

Subchapter I — General Provisions

DOC 328.01 Purpose. The purpose of this chapter is to provide rules, services, and programs for offenders who are under supervision of the department. All of the following specific goals and objectives assist the department in fulfilling this purpose:

(1) To supervise offenders to the extent necessary to meet public, victim, staff, and offender safety responsibilities.

(2) To assist in providing opportunities to achieve the critical success factors of residence, employment, appropriate treatment and general stability in living situation.

(3) To assist in providing access to community−based programs for offenders on community supervision.

(4) To establish necessary guidelines, procedures, and controls to maintain program, staff, and fiscal accountability and to promote program efficiency and effectiveness.

(5) To cooperate with other agencies and communities in activities for the purpose of prevention of crime and victimization.

(6) To protect the health, rights and dignity of all offenders involved in the department's programs and activities.

DOC 328.02 Applicability. This chapter applies to the department and to offenders under the division's custody and supervision for correctional purposes. It implements ss. 165.76, 301.001, 301.03, 301.45, 301.46, 302.11, 302.113, 302.114 302.14, 302.19, 302.31, 302.335 304.06 (3), 304.072, 304.074, 304.075, 304.12, 304.13, 304.135, 304.137, 304.14, 939.615 941.29, 961.47, 971.17, 972.15, 973.01, 973.04, 973.06, 973.07, 973.08, 973.09, 973.10, 973.155, 973.20, Stats., and chapters 950 and 980, Stats.

DOC 328.03 Definitions. In this chapter:

(1) "Abscond" means the failure of an offender to make himself or herself available as directed by the agent.

(2) “Administrator” means the administrator of the division or designee.

(3) “Advocate” means a person who assists in the presentation of the offender’s position, is independent, and able to act in an offender’s best interest. The advocate may not be a person in the custody or under the supervision of the department or an employee of the department.

(4) “Agent” means an employee of the division who may be assigned the responsibilities under this chapter.

(5) “Alternative to revocation” means placement in a program or imposition of a sanction in lieu of revocation.

(6) “Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.

(7) “Body contents search” means a search in which the offender is required to provide a biological specimen, including but not limited to a sample of urine, breath, blood, stool, hair, fingernails, saliva, semen, or other identifying physical material.

(8) “Collateral” means any person who has contact with or information about an offender.

(9) “Commitment term” or “term” means that period of time during which the offender is subject to the control and supervision of the department.

(10) “Community supervision” or “supervision” means the control and management of offenders on probation, parole, extended supervision or other statuses as authorized by court order or statute.

(11) “Conditions” means specific regulations imposed on the offender by the court or earned release review commission.

(12) “Contacts” means communications between an agent and an offender or collateral.

(13) “Contraband” means:

(a) Any item which the offender may not possess under the rules or conditions of the offender’s custody or supervision; or

(b) Any item whose possession is forbidden by law.

(14) “Deadly force” means force which the user reasonably believes will create a substantial risk of causing death or great bodily harm to another.

(15) “Department” means the department of corrections.

(16) “Discharge” means the completion of the term of supervision by an offender.

(17) “Division” means the division of community corrections.

(18) “Extended supervision” means that portion of a bifurcated sentence that is ordered to be served on community supervision as provided in s. 973.01, Stats.

(19) “Extension” means the continuation of supervision by the sentencing court beyond the current discharge date.

(20) “Financial resources” of an offender means any income or assets from any source under the offender’s sole or joint control.

(21) “Force” means the exercise of strength or power to overcome resistance or to compel another to act or to refrain from acting in a particular way. It includes the use of mechanical or physical power or strength.

(22) “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.

(23) “Hearing examiner” means a person appointed to preside over a hearing to determine whether the department may impose a condition of supervision requiring compliance with prescribed psychotropic medication. The hearing examiner may not be currently involved in the offender’s treatment, diagnosis, supervision, or the direct supervisor of the agent or psychiatrist treating the offender.

(24) ‘‘Incapacitating agent” means any product or device commercially manufactured for the purpose of temporary control of an offender.

(25) “Interstate compact” means an agreement between Wisconsin and another state in the United States or territory of the United States which provides the means for community supervision of offenders between states as authorized under ss. 304.13, 304.135, 304.14 and 304.16 Stats.

(26) “Intoxicating substance” means anything which if taken into the body may alter or impair normal mental or physical functions.

(27) “Non−deadly force” means force which the user reasonably believes will not create a substantial risk of causing death or great bodily harm to another.

(28) “Offender” means a person who is committed to the custody of the department for correctional purposes and is under community supervision of the division.

(29) “Pat−down” means a frisk of the offender’s body outside the clothing.

(30) “Personal search” means a search of an offender’s person, including but not limited to the offender’s pockets, an examination of the offender’s shoes, hat and other clothing, and a visual inspection inside the offender’s mouth.

(31) “Region” means a subunit of the division.

(32) “Regional chief” means an employee or designee of the division responsible for the administration of a region.

(33) “Reporting” means a contact between an agent and offender determined by the rules or conditions of supervision.

(34) “Revocation” means the removal of an offender from community supervision in accordance with ch. DOC 331 and HA 2.

(35) “Rules” means departmental regulations applicable to a specific offender under supervision.

(36) “School” means a public school under s. 115.01 (1), Stats., a charter school as defined in s. 115.001 (1), Stats., or a private school as defined in s. 115.001 (3r), Stats.

(37) “Secretary” means the secretary of the department or designee.

(38) “Standard business hours” means 7:45am to 4:30pm on a working day.

(39) “Supervision fees” means those financial obligations imposed on offenders pursuant to s. 304.073 and 304.074, Stats.

(40) “Supervisor” means an employee of the division responsible for the oversight and management of staff involved in direct supervision of offenders.

(41) “Tolled time” means the period of time between the date of an offender’s violation and the date the offender’s supervision is reinstated or revoked.

(42) “Waiver” means the written relinquishment of known rights by an offender.

(43) "Working day" means any day, during standard business hours Monday through Friday, except a state legal holiday.

Subchapter II — Offender under Supervision

DOC 328.04 Community supervision. (1) Division employees are to provide individualized supervision of offenders in a manner consistent with the goals and objectives of this chapter.

(2) When an offender is placed on supervision, an agent's duties shall include all of the following:

(a) Obtain information necessary for appropriate supervision of the offender.

(b) Evaluate the offender's needs and risk to re−offend.

(c) Determine the short−term and long−term goals and objectives of the offender's overall supervision.

(d) Establish rules and explain and provide a copy of rules and conditions.

(e) Inform the offender of the possible consequences of not abiding by the rules and conditions.

(f) Cooperate with and assist the district attorney who is responsible for determining restitution.

(g) Inform the offender of the administrative review process under s. DOC 328.12.

(h) Inform the offender of applicable state and local law enforcement registration requirements.

(i) Monitor the offender's compliance with the conditions and rules.

(j) Maintain complete and accurate case records for each offender.

(k) Supervise persons committed under s. 971.17, and ch. 980, Stats., in accordance with the agreement between the department and the department of health services.

(l) Report suspected child abuse cases to the appropriate authorities.

(m)Report to a supervisor as directed on the status of the offender.

(n) Report all violations of the criminal law by the offender to a supervisor and if appropriate, to law enforcement.

(o) Conduct investigations and prepare institution release plans in accordance with s. DOC 328.05.

(p) Collect restitution and other court ordered financial obligations, and fees as authorized by statute.

(q) Inform the offender of the process to petition for termination of lifetime supervision under s. 939.615 (6), Stats., if applicable.

(3) Standard rules require that the offender shall comply with all of the following:

(a) Avoid all conduct which is in violation of federal or state statute, municipal or county ordinances, or tribal law.

(b) Avoid all conduct which is not in the best interest of the public welfare or the offender's rehabilitation.

(c) Report all arrests or police contacts to an agent within 72 hours.

(d) Make every effort to accept opportunities and counseling offered by the department. This includes authorizing the exchange of information between the department and any court ordered or agent directed program and subsequent disclosure to any parties deemed necessary by the agent to achieve the purposes of this chapter and ch. DOC 331.

(e) Inform the agent of whereabouts and activities as directed.

(f) Submit a written offender report and any other such relevant information as may be required.

(g) Submit to searches ordered by the agent under s. DOC 328.24.

(h) Obtain permission from an agent prior to changing residence or employment. In the case of an emergency, notify the agent of the change within 72 hours.

(i) Obtain permission and a travel permit from an agent before leaving the state.

(j) Obtain permission from an agent prior to the purchase, trade, sale, or operation of a motor vehicle.

(k) Obtain permission from an agent prior to borrowing money or purchasing on credit.

(l) Pay court ordered financial obligations and other fees as required.

(m) Obtain permission from an agent prior to purchasing, possessing, owning or carrying a firearm or other weapon, including incapacitating agents. An offender may not be granted permission to possess a firearm if prohibited under federal or state law.

(n) Shall not vote in any federal, state, county, municipal, or school board election held in Wisconsin while on supervision for a felony conviction.

(o) Abide by all rules of any detention or correctional facility.

(p) Provide true and correct information verbally and in writing as required by the department.

(q) Report to an agent as directed.

(r) Submit a biological specimen for testing when ordered by a court or under s. 165.76, Stats.

(s) Comply with any additional rules that may be established by an agent. The rules may be modified at any time as appropriate.

DOC 328.05 Institution release planning. After the inmate and institution staff have prepared a proposed release plan, the agent shall investigate the plan, comment as to its appropriateness, and suggest modifications if necessary. The plan must address any court−ordered conditions or conditions of release.

DOC 328.06 Notice to law enforcement of inmate release to supervision. Before releasing an inmate to supervision, the department shall notify the municipal police department and the county sheriff in the area where the individual will reside.

DOC 328.07 Supervision fees. (1) SUPERVISION FEE. An offender shall pay a supervision fee.

(2) ESTABLISHMENT OF FEE. (a) The department shall set a supervision fee for an offender based on the following table:

Table DOC 328.08

Category	Gross Monthly Income	Supervision Fee
I	$0− 799.99	$20.00
II	$800.00−1,499.99	40.00
III	$1,500.00 or more	$60.00

(b) The department shall adjust the supervision fees in Table DOC 328.08 every 5 years by multiplying each fee by the percentage increase of the Consumer Price

Index, as defined in s. 16.004 (8) (e) 1., Stats., from January 1, 2012 to January 1, 2017 and every 5 years thereafter and adding that amount to each fee, rounded to the nearest $ 5.00 increment. If the Consumer Price Index reflects a percentage decrease, the supervision fees will not be reduced but remain the same.

(c) The department shall publish adjustments to Table DOC 328.08 in the Wisconsin administrative register.

(3) AGENT ACTION. The assigned agent shall:

(a) Establish the offender's supervision fee payment.

(b) Provide the offender with a copy of the fee schedule.

(c) If sub. (5) is applicable, exempt the offender from paying the supervision fee.

(4) REPORTING AND VERIFICATION OF SUPERVISION FEE. The department shall do all of the following:

(a) Record all supervision fees paid by the offender.

(b) Provide the offender access to a copy of the record of payments to verify receipt of payment.

(5) EXEMPTIONS. (a) Except as provided under par. (b), the department may exempt supervision fees if an offender meets one or more of the following conditions:

1. The offender has used all reasonable and appropriate means to obtain employment as determined by the offender's agent, but has been unable to obtain employment which provides the offender sufficient income to pay supervision fees.

2. The offender is a student enrolled in a full−time course of instruction. For the purpose of this subdivision, a "full−time course of instruction" means enrolled in an accredited course of instruction and registered for more than 9 credits in post secondary education or full−time high school or full−time junior high school. The offender shall provide a release of information to verify enrollment and registration of credits. If the offender fails to provide the release of information, no exemption may be given.

3. The offender is undergoing psychological, chemical or medical treatment consistent with the supervision plan and is unable to be employed. The offender shall provide a release of information to verify participation.

4. The offender has a statement from a licensed health care provider excusing the offender from work for a medical reason and the offender is unable to be employed because of the medical reason.

(b) An offender shall not receive an exemption if the department determines that the offender has the ability to pay despite his or her meeting one or more of the exemption criteria.

(c) The agent shall make a determination concerning an offender's exemption from the supervision fee within 10 working days of receiving an offender for supervision or within 10 working days of a reported change in the offender's financial status.

(d) An offender who is supervised by another state under an interstate compact is not required to pay a supervision fee.

(e) An offender who is serving a sentence in prison and has a concurrent supervision case is not required to pay a supervision fee.

(f) The agent's supervisor shall review all exemptions from payment of the supervision fee.

(6) REFUNDS OF SUPERVISION FEES. (a) The department shall refund supervision fees only when the offender has paid in advance and was not under supervision.

(b) The department will not make any refund to an offender for a partial month of supervision.

(c) The department shall apply the refund to restitution or any other outstanding court ordered or financial obligations required by the department. The remainder of any unapplied funds will be refunded to the offender.

DOC 328.08 Financial obligations. When a court has ordered restitution or other obligations to be paid by an offender as a condition of supervision, the following procedures apply:

(1) ACCEPTANCE OF PAYMENT. The department may at any time accept payments from or on behalf of an offender pursuant to state statute or as ordered by a court and shall transmit that payment to the department cashier for deposit in the offender's account for disbursement.

(2) UNPAID FINANCIAL OBLIGATIONS. (a) For offenders who have not paid court ordered obligations, the department will provide notification to the sentencing court, district attorney, and victim at least 90 days prior to discharge.

(b) If the department determines that the offender has made a good faith effort to pay ordered obligations, the department shall recommend the court order the restitution due be entered as a civil judgment in favor of the victims.

(c) When the department determines that an offender who is on probation has not made a good faith effort to pay the ordered obligations, the department may recommend that the court extend the term of probation and modify any condition.

(d) An offender who is on probation shall be informed of his or her rights to a hearing and waiver under s. DOC 328.10 (2) and (3).

DOC 328.09 Extension of probation. (1) DEPARTMENT RECOMMENDATION. The department may recommend that a court extend the probation period under s. 973.09 (3) (a), Stats.

(2) HEARING. If the department recommends extension of an offender's probation, the department shall notify the offender of the recommendation and the right to a court hearing.

(3) WAIVER. An offender may knowingly and voluntarily waive the hearing in writing. The waiver shall state that:

(a) The offender has read the notice, or has had it communicated to him or her, and understands the notice under sub. (3).

(b) The offender acknowledges that there is good cause for the extension.

(c) The offender consents to an extension of the supervision for the specific period of time stated in the notice.

(d) The offender was notified of the right to consult with an attorney before signing the waiver.

DOC 328.10 Funds and property. (1) DISCLOSURE OF FINANCIAL INFORMATION. An agent may require the offender to disclose all financial information, including tax

returns, financial institution account statements, and wage information, to assist in the management of the offender's financial resources.

(2) MONITORING OF OFFENDER FINANCIAL OBLIGATIONS. Receipting, remitting, and auditing of offender financial obligations shall be done in a manner consistent with department policies.

(3) VOLUNTARY WAGE ASSIGNMENT. An agent may initiate a voluntary wage assignment against an offender's wages in order to assure collection of court ordered financial obligations and other fees. If married, the offender's spouse must also consent to the wage assignment.

(4) EMERGENCY LOANS. The department may establish a revolving fund to provide emergency loans to offenders for the purchase of basic living necessities.

(5) OFFENDER PROPERTY. Agents shall not receive or store any property for an offender except as provided under s. DOC 328.25.

(6) MANAGEMENT OF OFFENDER'S FINANCIAL RESOURCES. (a) An agent may assist in the management and disbursement of the financial resources of an offender if one of the following factors apply:

1. The offender requests assistance.
2. The agent believes that management is necessary to control the offender's funds.
3. The agent believes that management is necessary to ensure compliance with the offender's existing restitution orders, and other financial obligations, including payment of supervision or monitoring fees under ss. DOC 328.08, 332.18, 332.19, and 332.20.

(b) When an agent manages funds under this section, the agent shall document all actions under this section as required by the department, including the reason the offender's money is being managed.

(c) Management of the funds may be done only through a bank account in the offender's name. All financial resources of an offender managed by an agent shall be deposited directly into the offender's account upon receipt.

DOC 328.11 Purchase of goods and services. If an offender requires assistance or materials that cannot reasonably be provided through any other available resource, the department may provide assistance in accordance with s. 301.08, Stats. Approval of the expenditure is necessary before services may be provided.

DOC 328.12 Offender administrative review process. (1) PURPOSE. The department shall provide offenders an opportunity for administrative review of certain decisions by allowing offenders to raise concerns regarding their supervision in an orderly manner.

(2) SCOPE. An offender may request administrative review to challenge any department decision affecting an offender except a decision concerning:

(a) Revocation.

(b) Custody and detention.

(c) Denial of use or possession of firearms pursuant to federal or state law.

(d) Special conditions or terms of supervision imposed by a court or earned release review commission.

(e) Decisions regarding early discharge from the term of supervision.

(3) REQUEST FOR ADMINISTRATIVE REVIEW. (a) Prior to initiating a request for administrative review, the offender shall attempt to resolve the concern with the agent.

(b) If the concern is not resolved under par (a), the offender may file a written request for administrative review to the agent's supervisor within a reasonable time. The request and subsequent reviews shall be filed utilizing the department's forms.

(c) The offender may request a review of the supervisor's decision by the regional chief within a reasonable time. If the concern is not resolved, the offender may request a final review by the administrator within a reasonable time.

(4) EFFECT OF REVIEW OF DISPUTED DECISION. During the administrative review process, the affected parties shall comply with the decision under dispute.

(5) EXPEDITED REVIEW. The department may expedite the process if the concern raised is time sensitive.

DOC 328.13 Temporary travel. (1) The department may authorize temporary out−of−state travel when it is consistent with the purpose and goals of the offender's supervision, applicable interstate compact provisions, and applicable civil commitment provisions. An offender may travel out of the state of Wisconsin only if he or she has submitted a written request and has received written authorization prior to the requested travel. The division may grant prior authorization for travel out of the state of Wisconsin as follows:

(a) Agent approval is required for travel not to exceed 15 days.

(b) Supervisory approval is required for travel exceeding 15 days.

(c) Travel permits may be used to authorize multiple trips to another state during a specific time period.

(2) An authorization for temporary out of state travel shall specify that the offender is responsible for all of the following:

(a) The costs incurred by the travel.

(b) Reporting as required.

(c) Returning to the state upon agent request at any time the offender is out of state.

(d) Waiving extradition.

(e) Carrying a travel permit.

(3) Offenders shall be allowed to travel to foreign countries only as follows:

(a) As authorized by the sentencing court.

(b) Upon verification of official military orders from the US Armed Forces or National Guard.

DOC 328.14 Interstate transfer. (1) If the department determines that transfer to another jurisdiction is in the best interests of an offender and consistent with the goals of this chapter, an interstate transfer may be initiated.

(2) An offender from another state, who has requested supervision and is present in Wisconsin prior to formal acceptance, is subject to the provisions of this chapter.

(3) An offender subject to supervision in another state will be accepted for supervision in Wisconsin if one of the following applies:

(a) The offender meets the criteria established by the applicable interstate compact.

(b) The department consents.

DOC 328.15 Voluntary return to a correctional facility. (1) An offender may request a voluntary return to a correctional facility for a period not to exceed one year.

(2) The request shall be in writing in a format prescribed by the department.

(3) The division shall inform the offender of all of the following:

(a) Upon return to the institution, the offender shall remain incarcerated until the agreed release date unless the department determines earlier release is appropriate.

(b) Offenders who were convicted prior to December 30, 1999, must waive parole consideration, good time, and entitlement to mandatory release.

(c) The department's rules applicable to inmates in correctional facilities shall apply to the offender during the period of incarceration.

(4) Upon approval of the request by the regional chief, the division shall forward the request to the administrator of the division of adult institutions for a decision.

(5) During the period of incarceration the agent shall maintain contact with the offender and facilitate a release plan.

DOC 328.16 Discharge. (1) Offenders shall be informed of the individualized objectives and conditions of supervision required for discharge.

(2) Except as provided in s. DOC 328.17, when supervision has expired, the department shall do all of the following:

(a) For a felon, issue a certificate of discharge or a certificate of final discharge if the offender has discharged from all felony cases. A certificate of final discharge under this subdivision shall list the civil rights that have been restored to the offender and the civil rights that have not been restored to the offender.

(b) For a misdemeanant, notify the offender that his or her period of supervision has expired.

(c) For a probationer, the department shall notify the sentencing court that the period of probation supervision has expired.

DOC 328.17 Early discharge. (1) The department may grant an offender early discharge when there is a reasonable probability that supervision is no longer necessary for the rehabilitation and treatment of the offender and for the protection of the public. The department shall consider all of the following in making its determination:

(a) The goals and objectives of supervision have been satisfied.

(b) For offenders on probation, the offender has served at least fifty percent of the term of probation.

(c) For offenders on parole, the offender has reached his or her mandatory release date or has been under supervision for two years.

(d) For offenders on extended supervision, all of the following shall apply:

1. An offender is not eligible for early discharge under this section if convicted of any of the following offenses: Class B felony offenses, or violations of ss. 940.03, 940.06, 940.11 (1), 940.235, 940.302, 940.31 (1), 940.32 (3), 941.21, 946.465, 948.03 (2) (a), or 948.40 (4) (a), Stats., or offenses against elderly or vulnerable persons as defined in s. 939.22 (20d), Stats., offenses related to ethical government, as defined in s. 939.22 (20m), Stats., or offenses related to school safety as defined in s. 939.22 (20s), Stats.

2. The offender has been supervised for a minimum of two years and the discharge is in the interest of justice**.**

3. The department shall notify the victim of the offender, as defined under s. 950.02 (4) (a), Stats., of its intent to discharge the offender from extended supervision.

(2) Offenders serving a life sentence are eligible for discharge as provided by s. 973.013 (2), Stats.

(3) The department may not discharge an offender on lifetime supervision under s. 939.615, Stats.

(4) Notwithstanding sub. (1) and (2), the department may grant an early discharge if extraordinary circumstances exist.

Subchapter III — Enforcement Options and Related Matters

DOC 328.18 Use of force. Whenever feasible, staff shall rely on law enforcement authorities to exercise force against offenders. When such assistance is not available, staff may use force subject to this section.

(1) Non−deadly force may be used by staff against offenders only if the user of force reasonably believes it is immediately necessary to realize one of the following purposes:

(a) To prevent death or bodily harm to oneself or another.

(b) To prevent unlawful damage to property, including damage that may result in death or bodily harm to oneself or another.

(c) To prevent an offender from fleeing the control of a staff member.

(d) To change the location of an offender.

(2) Staff may use deadly force only to prevent death or great bodily injury to oneself or another.

(3) Staff may not use deadly force if its use creates a substantial danger of harm to innocent third parties, unless the danger created by not using such force is greater than the danger created by using it.

(4) The use of excessive force is forbidden. Only as much force may be used as is reasonably necessary to achieve the objective.

DOC 328.19 Mechanical restraints. (1) Staff may use mechanical restraints authorized by the department to restrain an offender only in accordance with the following:

(a) To protect staff or others from an offender who poses an immediate risk of flight or physical injury to others.

(b) To protect an offender who poses an immediate threat of physical injury to self.

(c) To take an offender into custody.

(d) To transport an offender while in custody.

(2) Mechanical restraints may not be used under any of the following circumstances:

(a) As a method of punishment.

(b) In a manner that intentionally causes undue physical discomfort, inflicts physical pain, or restricts the blood circulation or breathing of the offender.

(c) To restrain an offender to a vehicle.

(3) Staff shall monitor an offender in restraints at regular intervals until the restraints are removed, or custody of the offender is transferred.

(4) Offenders should be released from restraints to perform bodily functions and for meals when the removal does not jeopardize safety and security.

DOC 328.20 Incapacitating agents. An employee may possess and use only those incapacitating agents and delivery systems approved by the department.

(1) AUTHORIZED USE OF INCAPACITATING AGENTS. An employee who is on duty may possess or use incapacitating agents only under the following conditions:

(a) After successfully completing a department approved training program for use of incapacitating agents.

(b) While acting in self−defense or defense of a third person.

(2) CONTAMINATION RESPONSE. An employee using incapacitating agents shall provide an exposed person an opportunity for necessary medical attention.

(3) DOCUMENTATION. The employee using incapacitating agents shall document its use according to department policy and procedure.

DOC 328.21 Firearms or other weapons. No employee of the division may possess or use a firearm or other weapons while on duty, except as permitted under s. DOC 328.25.

DOC 328.22 Search and seizure; pat−down. (1) GENERAL POLICY. A search of an offender, the offender's living quarters or property, or seizure of the offender's body contents may be made at any time, but only in accordance with this section. Strip searches or body cavity searches are prohibited. For purposes of this section, the mouth is not a body cavity.

(2) JUSTIFICATION. A search or seizure is appropriate and consistent with the goals and objectives of supervision under any of the following circumstances:

(a) When a staff member has reasonable grounds to believe the offender possesses contraband or evidence of a rule violation on or within his or her person or property.

(b) With the consent of the offender, when a search or seizure is necessary to verify compliance with the rules.

(c) When ordered by the court.

(3) REASONABLE GROUNDS. In deciding whether there are reasonable grounds to believe that an offender has used, possesses or is under the influence of an intoxicating substance, that an offender possesses contraband, or that an offender's living quarters or property contain contraband or evidence of a rule violation, a staff member may consider any of the following:

(a) The observations of staff members.

(b) Information provided by informants. In evaluating the reliability of the information and the informant, staff shall consider the following:

1. The detail, consistency, and corroboration of the information provided by the informant.

2. Whether the informant has provided reliable information in the past and whether the informant has reason to provide inaccurate information.

(c) The activity of the offender.

(d) Information provided by the offender.

(e) The experience of a staff member with that offender or in a similar circumstance.

(f) Prior seizures of contraband from the offender.

(4) INFORMING THE OFFENDER. Whenever possible before a search or seizure is conducted, the staff shall inform the offender of all of the following:

(a) A search or seizure is about to occur.

(b) The reason for the search or seizure.

(c) The method for conducting the search or seizure.

(d) The place where the search or seizure is to occur.

(e) The consequences of not complying with the search or seizure.

(5) PAT DOWN. A pat−down may be conducted at any time a staff person has a reasonable concern that an offender may possess a weapon or other object which may be used as a weapon. After a pat−down, if a staff person has reasonable grounds to believe that the offender may be in possession of a weapon or contraband, the staff person may proceed with a personal search of the offender.

(6) PERSONAL SEARCH. (a) Any staff member may conduct a personal search of an offender.

(b) Every personal search shall be documented in the offender's case record.

(7) SEARCH OF LIVING QUARTERS OR PROPERTY. (a) An agent shall obtain supervisory approval prior to any search under this subsection.

(b) The staff person who conducted the search shall complete a written report of every search of an offender's living quarters or property. The report shall state all of the following:

1. The identity of the offender whose living quarters or property was searched.

2. The identity of any staff member who conducted the search and any other persons present during the search.

3. The date, time, and place of the search.

4. The reason for conducting the search.

5. Any items seized pursuant to the search with documentation of chain of custody.

6. Whether any damage was done to the premises or property during the search.

(c) During searches staff may read business records and personal mail of offenders. Staff may not read any privileged legal materials, which includes any communication between an offender and an attorney or any materials prepared in anticipation of a lawsuit.

(d) Staff may not forcibly enter any property to conduct a search.

(8) SEIZURE OF BODY CONTENTS. (a) Only licensed or certified medical staff shall take a blood or stool sample.

(b) When the agent or supervisor requires the collection of a urine specimen to be observed, a staff member of the same sex as the offender shall observe and collect the urine specimen.

(c) Any trained staff member may conduct breathalyzer tests or collect hair or other physical material samples.

(d) A report of a test on a specimen of an offender's urine, breath, blood, stool, hair, fingernails, saliva, semen, or other identifying physical material produced by the offender may be presented as evidence in a revocation hearing. The expert who made the findings need not be called as a witness in a hearing or proceeding under this chapter, ch. DOC 331, or ch. HA 2.

DOC 328.23 Contraband. (1) Any staff member who reasonably believes that an item in an offender's possession is contraband may seize the item, whether or not the staff member believes a violation of the offender's rules or conditions of supervision has occurred. Any items seized must be documented with chain of custody.

(2) The supervisor shall dispose of seized contraband after all proceedings in which it may be required have been completed. Disposition shall be as follows:

(a) All confiscated currency, whose true owner cannot be determined, shall be placed in the general fund.

(b) Checks and other negotiable instruments shall be returned to the maker. If it is not possible to determine an address for the maker of the check, the check shall be destroyed.

(c) U.S. bonds and other securities shall be held in the department's cashier's office, and upon proof of ownership, the item shall be returned to the owner.

(d) Property shall be returned to the owner if the owner is known, or sent at the offender's expense to another, in accordance with the nature of the property, unless the owner–transferred the property in an unauthorized manner. Otherwise, items of inherent value shall be sold through the department's purchasing officer and money received shall be placed in the general fund.

(e) Intoxicating substances, such as alcohol or controlled substances, shall be disposed of by staff in accordance with division policy.

(f) Firearms not required for use as evidence shall be disposed of in accordance with s. 968.20, Stats.

(g) Any item originally assigned as property of the state shall be returned to service.

DOC 328.24 Absconding. (1) If an offender absconds, a staff member shall issue an apprehension request.

(2) If an offender committed under s. 961.47 (1), Stats. absconds and is not located within 90 days, staff shall request that the committing court issue a capias ordering apprehension of the offender, vacating the order committing the offender to the custody of the department, or relieve the department of further responsibility for the offender. Following court action, the agent shall cancel the apprehension request.

(3) Once the offender is apprehended and becomes available, staff shall conduct a violation investigation and make a determination regarding disposition and cancel the apprehension request.

DOC 328.25 Tolled time. (1) The department may toll all or any part of the period of time between the date of the violation and the date of an order of revocation or reinstatement is entered, subject to sentence credit for time the offender spent in custody pursuant to s. 973.155 (1), Stats. If the offender is subsequently reinstated rather than revoked, time shall be tolled only if the reinstatement order concludes that the offender did in fact violate the rules or conditions of his or her supervision.

(2) A division of hearings and appeals administrative law judge or the secretary shall determine the amount of time to be tolled.

DOC 328.26 Reinstatement. (1) The department may reinstate an offender upon the offender's request and written admission of a violation of the rules or conditions of supervision sufficient to warrant revocation.

(a) The request under sub. (1) shall acknowledge both of the following:

1. The date of the violation.

2. The offender's awareness that the period between the date of violation and the date of reinstatement or revocation may be tolled.

(b) An offender's request for reinstatement and written admission shall be submitted to the regional chief to determine whether reinstatement is appropriate.

(c) A copy of the regional chief's decision, including the reasons for it, shall be sent to the offender and the original returned to the agent.

(d) If the regional chief determines that reinstatement should not occur, the revocation process may be initiated in accordance with s. DOC 331.03.

DOC 328.27 Custody and detention. Whenever feasible, staff shall rely on law enforcement authorities to take an offender into custody. When law enforcement assistance is not available, staff shall decide whether to disengage and issue an apprehension request or take the offender into custody in accordance with this section.

(1) CUSTODY ORDER. An agent shall order an offender into custody if the offender is alleged to have been involved in assaultive or dangerous conduct. A regional chief may permit exceptions to this subsection.

(2) DETENTION. An offender may be taken into custody and detained for one of the following purposes:

(a) For investigation of an alleged violation of a rule or condition of supervision.

(b) After an alleged violation to determine whether to commence revocation proceedings.

(c) For disciplinary purposes.

(d) To prevent a possible violation by the offender.

(e) Pending placement in a program as an alternative to revocation.

(3) LENGTH OF DETENTION. An offender may be detained in accordance with one or more of the following:

(a) Except as provided in sub. (6) and (7), an agent may authorize the detention of an offender under sub. (1) or (2) for a maximum of 5 working days.

(b) A supervisor may approve additional detention for a maximum of 5 working days.

(c) A regional chief may approve of detention for an additional 5 working days.

(d) The administrator may authorize detention beyond the foregoing time limits.

(e) An offender detained under par. (2) (c) may be detained with supervisory approval for only a maximum of 5 working days.

(f) This subsection does not apply to detentions pending final revocation which are authorized by an agent's immediate supervisor under s. DOC 331.04 (5) when a preliminary hearing is not held pursuant to s. DOC 331.04 (2).

(4) CUSTODY DECISIONS. Custody decisions during revocation proceedings shall be made in accordance with s. DOC 331.04 (5).

(5) DETENTION IN A STATE CORRECTIONAL FACILITY. The department may detain an offender on parole, extended supervision, or on felony probation with an imposed and stayed sentence in a state correctional institution including a probation and parole holding facility pending revocation proceedings.

(a) For placement of an offender in a state correctional facility other than a probation and parole holding facility, the regional chief shall make a detention request to the director of the bureau of offender classification and movement in the division of adult

institutions. The request shall include both of the following:

1. Court case information that permits legal admission for detention under this subsection.

2. Reason for requested detention in a state correctional institution rather than a county facility.

(b) The director of the bureau of offender classification and movement shall review the request and determine whether admission for detention in a state correctional institution will be authorized.

(6) CUSTODY OF AN OFFENDER ON LIFETIME SUPERVISION. The department may take an offender on lifetime supervision into custody under sub. (1) or par. (2) (a) for as long as reasonably necessary to investigate a possible violation of a condition or regulation of lifetime supervision. The department may hold an offender in custody for a maximum of 72 hours following completion of the investigation in order to refer the offender to the appropriate prosecuting agency for commencement of prosecution under s. 939.615 (7), Stats.

(7) DETENTION OF OFFENDER ON EXTENDED SUPERVISION. (a) The department may confine an offender on extended supervision beyond the time limits provided under sub. (3) as a sanction when both of the following occur:

1. The offender admits to the violation in writing.

2. The regional chief or designee approves of the sanction.

(b) The sanction may be served within a county jail if the sheriff approves.

(c) Confinement under the sanction will not exceed 90 days.

DOC 328.28 Psychotropic medication as a condition of supervision. The purpose of this section is to provide process for imposing a condition of supervision that requires compliance with prescribed psychotropic medications.

(1) PSYCHOTROPIC MEDICATION AS A CONDITION OF SUPERVISION. Psychotropic medication may be made a condition of supervision only when one of the following applies:

(a) Following commitment proceedings where the offender has been found not competent to refuse psychotropic medication.

(b) With the consent of a guardian who is able to authorize treatment of the offender with psychotropic medication.

(c) Following a department hearing, under sub. (2), approving a condition requiring the offender's compliance with prescribed psychotropic medication.

(d) When the offender waives a department psychotropic medication hearing under sub. (2).

(e) When ordered by a court of law.

(2) CRITERIA FOR REQUESTING A HEARING. An agent shall request approval for a hearing from a regional chief to determine the need for requiring psychotropic medication as a condition of supervision when all of the following apply:

(a) The use of psychotropic medication is medically indicated.

(b) The offender refuses to take psychotropic medication.

(c) The offender does not waive the hearing.

(3) NOTICE OF HEARING. The offender shall receive written notice of the hearing at least 24 hours in advance. The notice shall include all of the following:

(a) The basis for the allegations that use of psychotropic medication is medically indicated and necessary.

(b) The date, time, place, and purpose of the hearing.

(c) The right to be represented by an advocate.

(d) The right to be heard and present evidence and relevant witnesses.

(e) The right to cross−examine department witnesses.

(f) The right to a written decision within 10 working days of the hearing, including the reason for the decision.

(4) ACCESS TO DEPARTMENTAL OFFENDER HEALTH CARE RECORDS. Department employees directly involved in the decision regarding psychotropic medication as a condition of supervision shall have access to the minimum necessary amount of protected health care information to enable them to make an informed decision relating to whether compliance with psychotropic medications should be required as a condition of supervision.

(5) PSYCHOTROPIC MEDICATION HEARING. When an offender does not waive the hearing and refuses to take prescribed psychotropic medication, the department shall hold a hearing. The hearing may be conducted in person or by telephone.

(a) The department has the burden of proof to establish, by a preponderance of the evidence, that treatment with psychotropic medication is medically indicated and necessary to accomplish the goals of supervision.

(b) The hearing examiner is not bound by common law or statutory rules of evidence other than attorney−client privilege. The hearing examiner shall admit all evidence, including testimony which has reasonable probative value and is not unduly repetitious or cumulative.

(c) The hearing examiner shall do all of the following:

1. Administer oaths or affirmations.

2. Take an active role in questioning witnesses and eliciting testimony as necessary.

3. Regulate the course of the hearing.

4. Keep summary notes of the hearing.

5. Render a written decision whether to impose a condition of supervision requiring compliance with prescribed psychotropic medication upon a finding that psychotropic medication is medically indicated and necessary to accomplish the goals of supervision.

(6) APPEAL OF DECISION. The offender may appeal a decision ordering compliance with prescribed psychotropic medication to the secretary within 10 days of the written decision. The decision of the hearing examiner shall remain in effect while the appeal is pending.

(7) ANNUAL REVIEW. A hearing examiner shall review the decision ordering compliance with prescribed psychotropic medication on an annual basis.

(a) A different hearing examiner from the examiner who made the original determination may perform the annual review.

(b) The hearing examiner under par. (a) shall give the offender notice of the date of the annual review, what evidence is being considered, and the offender's right to respond.

(c) The hearing examiner may continue the order requiring compliance with prescribed psychotropic medication if evidence since the time of the last review shows that psychotropic medication is medically indicated and necessary to accomplish the goals of supervision.

SECTION 2. DOC 328 appendix is repealed.

SECTION 3. 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.

Agency Contact Person

Kathryn R. Anderson, Chief Legal Counsel, Department of Corrections, 3099 East Washington Avenue, P.O. Box 7925, Madison, WI 53707−7925 (608) 240−5049; FAX (608) 240−3306 Kathryn.Anderson@Wisconsin.gov.

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 10−127

(DNR # CF−28−09)

NOTICE IS HEREBY GIVEN that pursuant to sections 29.011, 29.014, 29.024, 29.03, 29.053(3), 29.192, 29.193, 29.885, 169.21, 169.39 and 227.11, Stats., the Department of Natural Resources will hold public hearings on revisions to Chapter NR 51, Wis. Adm. Code, relating to the administration of Stewardship grants.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held by videoconference on **December 1, 2010**, at **1:00 p.m**. at the following locations:

MADISON
The Pyle Center
Room 315
702 Langdon St.
Madison, WI 53702

WAUKESHA
Waukesha County Technical College
Rm. B−091
800 Main Street
Pewaukee, WI 53072

GREEN BAY
Green Bay State Office Building
Room 618
200 North Jefferson Street
Green Bay WI 54301

WAUSAU
UW−Marathon County Wausau
Room 218
518 S. 7th Ave.
Wausau, WI 54401

SPOONER
UWEX Cooperative Extension Northern District Office
Professional Building Conference Room (not the Administrative Office)
(Just south of the post office)
702 Front St.
Spooner, WI 54801

EAU CLAIRE
Eau Claire State Office Building
Room 139
718 W Clairemont Ave
Eau Claire, WI 54701

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please contact Amy Bradley at (608) 267−0496 with your specific accommodation request at least 10 days before the date of the scheduled hearing.

Copies of Proposed Rule

The proposed rule and fiscal estimate may be reviewed at the following Internet site: http://adminrules.wisconsin.gov.

Submission of Written Comments

Written comments on the proposed rule may be submitted as follows:

Via U.S. mail to Ms. Amy Bradley, Bureau of Community Financial Assistance, P.O. Box 7921, Madison, WI 53707.

Electronically at the following Internet site: http://adminrules.wisconsin.gov .

Comments may be submitted until 4:00 p.m. on Wednesday, **December 8, 2010**. Written comments — whether submitted by U.S. mail or electronically — will have the same weight and effect as oral statements presented at the public hearings. Hard copies of the proposed rule and fiscal estimate may be obtained by contacting Ms. Bradley at the e−mail address or phone number listed below.

Analysis Prepared by the Department of Natural Resources

Statutory authority

Sections 29.011, 29.014, 29.024, 29.03, 29.053(3), 29.192, 29.193, 29.885, 169.21, 169.39 and 227.11, Stats.

Plain language analysis

Chapter NR 51, Wis. Adm. Code, establishes applicant and project eligibility standards and subprogram criteria that are used by the Department of Natural Resources (DNR) in determining Knowles−Nelson Stewardship grant awards to local units of government, nonprofit conservation organizations, and Friends Groups for land acquisitions and development projects. The proposed rule contains a total of 19 subchapters: 3 subchapters address general provisions and the remaining 16 address specific Stewardship subprograms.

Proposed changes to ch. NR 51 fall into the following categories:

1. Housekeeping — Corrections of grammar, sentence structure, definitions of terms used in the existing ch. NR 51 but not previously defined, and gathering of requirements from throughout ch. NR 51 into one location when those requirements apply to all categories of Stewardship grants.

2. Changes resulting from reauthorization of the Knowles−Nelson Stewardship Program in *2007 Wis. Act 20*

— Adds public access requirements by reference to ch. NR 52, Wis. Adm. Code. Adds new signage requirements. Adds three new subchapters, as follows:

- Grants to Counties for County Forests (s. 23.0953 (2) (a) 1., Wis. Stats.)
- Grants to Counties when the DNR asks for Assistance (s. 23.0953(2) (a) 2., Wis. Stats.)
- Recreational Boating Facility grants (s. 23.0917 (2) (a) 3m., Wis. Stats.)
- Allows grant awards for up to 75% of total project costs to nonprofit conservation organizations that meet certain criteria (s. 23.096 (2m), Wis. Stats.)

3. Incorporation of Existing Grant Practices – Many of these practices have evolved and been used since ch. NR 51 was last promulgated in 2001. Some changes in this category represent changes in policy.

Policy issues that are addressed in the proposed rule include:

1. Change the amount of grant funds typically advanced to Friends Groups to avoid problems with repayment to the DNR and to comply with the IRS Code. In general, 50% will be advanced; higher amounts can be advanced under certain conditions. To address Friends Group cash flow in 50% advance circumstances, Friends Groups may also request partial reimbursements once the grant agreement has been signed. Increasingly, grant close out has been slow and documentation inadequate to justify entire advance. When a 100% advance is provided and all funds are expended, there may be no funds available to repay the state for undocumented expenditures. In addition, the IRS Code restricts what can be done with the proceeds from the sale of tax−exempt bonds. The State agrees to prohibit bond proceeds from being invested at a higher yield than those paid by the bond; this means Friends Group should not place grant advances in an interest−bearing account. Failure to comply with this IRS conditions can, and has recently, resulted in monetary penalties against the violator and puts the State's bond rating at risk. The practical result is that advances to Friends Groups must generally be more limited. Our solution is lesser advances but access to partial reimbursement.

2. Clarify that grants provided for development projects must encumber the grant property in perpetuity. By practice over the last decade, the DNR has required that properties are encumbered under the Stewardship program even if the DNR has only provided a Stewardship grant for a development project. This change to ch. NR 51 codifies past practices. To formalize the process, grant contracts will be recorded on the property deed.

3. Make "playgrounds" a grant−eligible support facility for nature−based outdoor recreation. Getting children into the outdoors and beginning an appreciation of nature often begins with playground equipment in parks. The statutes allow the DNR to add to the definition of nature−based outdoor recreation by rule. Local governments have requested this addition to the definition of nature−based outdoor recreation. The DNR feels playgrounds should be considered on a case−by−case basis so long as the playground is supplemental to the primary purpose of the grant.

4. Further defines criteria for nonprofit conservation organizations to be eligible to apply for a Stewardship grant.

5. Removes the requirement that the DNR "shall" provide a Stewardship grant for Natural Area projects if funds are available. This change acknowledges that project approval is also contingent upon approval of the Natural Resources Board and Joint Finance Committee, where appropriate.

6. Increases the required lease length on developed properties not owned by the sponsor from 20 to 25 years. This change provides increased protection for properties where Stewardship grant funds are used.

7. Simplifies the formula for determining how long nonprofit conservation organizations have to use "residual credits". Residual credit is the term used to describe any remaining value of a donated property where that property had earlier been used to match a Stewardship project. Project sponsors will have 36 months to use residual credit from the date that the first grant contract is issued to use residual credit. In addition, residual credit cannot be transferred among nonprofit conservation organizations and can only be used as match to projects within the same Stewardship grant subprogram.

8. Requires that a comprehensive outdoor recreation plan (CORP) be adopted by the time of a Stewardship grant application rather than the CORP being "under development" at the time of grant application. The DNR has experienced several instances where local government projects scored well enough to rank high enough to receive grant funding, but the project is delayed more than one year because the CORP took so long to be adopted. Funds reserved for local governments in these cases could have been awarded to the next highest−ranked project that was ready to proceed. Requiring that CORP be adopted by the time of a grant application ensured that Stewardship grant funds are used in a timely manner.

9. The proposed rule requires Natural Resources Board review for grant awards of $500,000 or more.

10. Other issues identified through public outreach and comment during the rule making process.

Related statutes or rules

General guidelines for department land acquisition are located in ch. NR 1, Wis. Adm. Code. The Department recently promulgated ch. NR 52, Wis. Adm. Code, relating to public access for nature based outdoor activities on both department and non−department lands that are acquired in whole or in part with funding from the Stewardship Program.

Comparison with rules in adjacent states

Minnesota, Michigan, Iowa and Illinois all have land acquisition programs that allow for the purchase of land, either in fee or as easements. Many of these programs are similar to the Stewardship program.

Minnesota: The Natural and Scenic Areas Grant Program was created to increase, enhance and protect Minnesota's natural and scenic areas. The program provides $500,000 in matching grants each year for fee simple purchases and conservation easements of environmentally important lands. http://www.dnr.state.mn.us/grants/landlnaturaLscenic.html

Michigan: The Michigan Natural Resources Trust provides approximately $35 million in financial assistance each year to local governments and the Michigan DNR to purchase land or rights in land for public recreation or for environmental protection or scenic beauty. It also provides financial assistance for the development of land for public outdoor recreation.
http://www.michigan.gov/dnr/O.1607.7−153−10366_37984_37985−124961−−.OO.html

Iowa: Iowa has two programs of interest:

1. The Resource Enhancement and Protection grant program in Iowa was created to enhance and protect Iowa's natural and cultural resources. This program provides up to $20 million annually to acquire land for recreational purposes. http://www.iowadnr.gov/reap/index.html

2. The Wildlife Habitat Promotion with Local Entities provides funding to county conservation boards for the acquisition and development of wildlife habitat. http://www.iowadnr.gov/grants/wildlife.html

Illinois: The Open Space Lands Acquisition and Development Program in Illinois provides approximately $20 million in assistance annually to local government agencies for acquisition and development of land for public parks and open space. http://www.dnr.state.il.us/ocd/newosladl.htm

Comparison with federal regulations

The Land and Water Conservation Fund (LWCF) is a federal grant program administered by the U.S. National Park Service. This program provides funding to states for the acquisition of land and the development of facilities for public outdoor recreation. Use of LWCF funds is directed by the Statewide Comprehensive Outdoor Recreation Plan that identifies general trends in outdoor recreation and identifies broad regional and statewide needs for land acquisition and recreational facility development.

The US Fish and Wildlife Service administers several programs that provide funding to the Department for land acquisition and facility development. Most of these funds are targeted to a specific purpose, such as the protection of habitat for endangered species, coastal areas and wetlands. In addition, the Department receives Federal funding for motor boat access acquisition and development, for wildlife habitat protection and management, and for fisheries habitat protection and development. Land acquired with funds from the U.S. Fish and Wildlife Service must generally be open to the public. There are some limited restrictions on the types of activities that are allowed to occur on these federally funded properties.

Summary of factual data and analytical methodologies

2007 Wis. Act 20 included reauthorization of the Knowles−Nelson Stewardship Program for another 10 years with annual appropriations of $86 million. The Stewardship Program is the primary funding source for land acquisition for conservation and public outdoor recreation in Wisconsin. Reauthorization included a provision requiring that lands purchased in whole or in part with funds from the Stewardship Program under ss. 23.0915 and 23.0917, Stats., be open for nature−based outdoor activities (hunting, fishing, trapping, hiking, and cross country skiing) unless the Natural Resources Board determines it is necessary to prohibit one or more of the nature−based outdoor activities to protect public safety, protect unique plant and animal communities, or to accommodate usership patterns.

2007 Wis. Act 20 also added two new grant subprograms and required that the recreational boating facilities grant program now be funded under the Stewardship Program.

In addition to noting needed rule revisions in the 10 years since ch. NR 51 was last revised, Department staff have worked with the Stewardship Advisory Committee (SAC) on proposed revisions to this rule. The SAC is appointed by the DNR Secretary. A complete listing of SAC members can be found at http://dnr.wi.gov/org/caer/cfa/Grants/Agendas−Minutes/StewMembers.pdf.

Department staff also collected comments while working with the WI County Forest Administrators and the WI Waterways Commission.

Anticipated private sector costs

These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

Small Business Impact

Pursuant to section 227.114, Stats., it is not anticipated that the proposed rules will have a significant economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266−1959.

Environmental Impact

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

Fiscal Estimate

State

No State Fiscal Effect

Local

No Local Government Costs

Assumptions used in arriving at fiscal estimate

2007 Wis. Act 20 included reauthorization of the Knowles−Nelson Stewardship Program until 2020 with annual appropriations of $86 million. Standards and criteria for grants issued to local units of government, non−profit conservation organizations, and Friends groups under the Stewardship Program are outlined in Chapter NR 51.

This proposed rule revision accomplishes several tasks:

1) NR 51 has not been updated since 1999. The proposed rule makes numerous "housekeeping" changes, provides administrative clarifications, provides several new definitions, and outlines administrative policy decisions that have been implemented since NR 51 was last updated.

2) 2007 Wis. Act 20 also added two new grant programs, and required that the recreational boating facilities grant program be funded under the Stewardship program. Three new subchapters have been added to Chapter NR 51 to be in compliance with these requirements. These new subchapters address grants for county forests (as outlined in s. 23.0953 (2)(a)1., Stats), grants to counties when the DNR asks for assistance (as outlined in s. 23.0953 (2)(a)2., Stats), and recreational boating facilities grants (as required under 23.0917 (2)(a)3m).

3) 2007 Wis. Act 20 also required that lands purchased with funds from the Stewardship Program under ss. 23.0915 and 23.0917, Stats., be open to hunting, trapping, hiking, fishing and cross country skiing unless the Natural Resources Board determines it is necessary to prohibit one or more of the nature−based activities to protect public safety, protect unique plant and animal communities, or to accommodate usership

patterns. Provisions have been added to Chapter NR 51 to be in compliance with this requirement, and with the proposed Chapter NR 52.

None of the proposed changes have a fiscal impact.

Agency Contact Person

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Notice of Hearing
Public Service Commission
CR 10−124

(PSC # 1−AC−214)

NOTICE IS GIVEN that pursuant to section 227.16(2)(b), Stats., the commission will hold a public hearing on proposed rule changes to Chapter PSC 135, Wis. Admin. Code, relating to natural gas pipeline safety, including updates to the state additions to the pipeline safety code.

Hearing Information

Date and Time:	**Location:**
December 7, 2010 Tuesday 1:00 pm	Public Service Commission Amnicon Falls Hearing Room 610 North Whitney Way Madison, WI 53705

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

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding, or who needs to receive this document in a different format should contact the docket coordinator, as indicated in the previous paragraph, as soon as possible.

Hearing− or speech−impaired individuals may use the commission's TTY number: If calling from Wisconsin, use (800) 251−8345; if calling from outside Wisconsin, use (608) 267−1479.

Submission of Written Comments

Comments Due:	**Address to:**
December 21, 2010 Tuesday NOON	Sandra J. Paske, Secretary to the Commission Public Service Commission of Wisconsin P.O. Box 7854 Madison, WI 53707−7854
FAX Due:	
December 20, 2010 Monday NOON	Fax: (608) 266−3957

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until **Tuesday, December 21, 2010**, at noon (**Monday, December 20, 2010,** at noon, if filed by fax). All written comments must include a reference on the filing to docket 1−AC−214. File by one mode only.

Industry:

File comments using the Electronic Regulatory Filing (ERF) system. This may be accessed from the commission's website, at www.psc.wi.gov.

Members of the Public:

If filing electronically: Use the Public Comments system or the Electronic Regulatory Filing system. Both of these systems may be accessed from the commission's website, at www.psc.wi.gov.

If filing by mail, courier, or hand delivery: Address as shown in the box on page 1.

If filing by fax: Send fax comments to (608) 266−3957. The fax filing *cover* sheet MUST state "Official Filing," the docket number 1−AC−214, and the number of pages (limited to 25 pages for fax comments).

Copies of Proposed Rule

A copy of the Notice of Hearing including the text of the proposed rule can be obtained by going to the PSC's electronic regulatory filing (ERF) system. This can be accessed through the PSC's website at psc.wi.us. Once in the ERF system click on "Search ERF," then enter the docket number 1−AC−214 and the docket type "Notice". The Notice and text of the proposed rule can also be obtained by contacting Joyce Dingman at joyce.dingman@wisconsin.gov or 608−267−6919.

Analysis Prepared By the Public Service Commission Of Wisconsin

Statutory authority and explanation of authority

This rule is authorized under sections 196.02 (1) and (3), 196.745 (1) (a), and 227.11.

Section 227.11 authorizes agencies to promulgate administrative rules. Section 196.02 (1) authorizes the Commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3) grants the Commission specific authority to promulgate rules. Section 196.745 (1) (a) grants the Commission specific authority to adopt rules requiring that the construction and operation of gas facilities be done in a reasonably adequate and safe manner.

Statute interpreted

This rule interprets section 196.745, Stats., and, under a contract with the U.S. Department of Transportation, Office of Pipeline Safety, the federal pipeline safety regulations (49 CFR 190 to 199).

Related statutes or rules

The federal pipeline safety statutes may be found in 49 USC 60101 to 60133. The federal pipeline safety regulations may be found in 49 CFR 190 to 199. Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission enforces the federal pipeline safety regulations for Wisconsin's natural gas pipeline operators, primarily public utilities. Under this agreement, the commission has the authority to make additions to the federal code that are more stringent than the federal standards.

Chapter PSC 134 is the rule that deals with gas service standards. That rule also has some requirements concerning safe interactions between pipeline operators and their customers.

Summary and analysis of the rule

The rulemaking in this docket relates to adoption of the federal natural gas pipeline safety code and includes updates to the state additions to the pipeline safety code.

Under an agreement with the U.S. Department of Transportation, Office of Pipeline Safety, the commission enforces the federal pipeline safety regulations for Wisconsin's natural gas pipeline operators, primarily public utilities. Under this agreement, the commission has the authority to make additions to the federal code that are more stringent than the federal standards. The commission in the past has made a number of state additions to the federal code.

Although the commission regularly adopts the federal code revisions, it has been 14 years since a comprehensive review of the state additions to the natural gas pipeline safety regulations has been conducted. Since that time there have been many changes in the gas industry across the country and in Wisconsin.

This rulemaking also incorporates by reference all of the federal code, including changes made since July 1, 2007.

The numbering in this rule can be confusing because it is making insertions into the federal code. As a result, the numbering used for the substantive sections follows federal numbering conventions rather than state. Further, again following federal drafting conventions, when referring to other provisions in a piece of rule language that is being inserted into the federal code, the term "paragraph" is used, whereas under Wisconsin drafting conventions it might be referred to, for example, as "section" or "subdivision." Finally, Subchapter I of the rules has general state provisions rather than additions to the federal code. These are numbered using 4 numbers after the rule number. Subchapter II of the rules has the additions to the federal code. These are numbered using 3 numbers after the rule number. Subchapter I uses 4 numbers because it needs to be numbered lower than the first number in Subchapter II. So, for example, 135.0001 comes before 135.001.

Some changes have been made to bring the rules into current rulemaking format, without making a substantive change. For example, negative statements such as "No utility shall" and "A utility shall not" have been changed to "No utility may" and "A utility may not." These remain mandatory provisions; they have just been converted to current drafting conventions. Further, the existing state additions to the pipeline safety rules have been reviewed and revisions made, where appropriate, to ensure pipeline safety in Wisconsin. Information concerning significant changes to the Wisconsin additions to the federal code include the following:

135.0009 – Whistleblower protection

Under this provision, employers cannot retaliate against employees who "blow the whistle" about safety or the reliability of any portion of the gas system.

135.0010 – Filing requirements and maintenance of records

Part of this provision was moved from PSC section 135.019(4). Under this provision, operators must file manuals, and updates to those manuals, with the commission. Operators must also keep records and manuals in Wisconsin. It is sufficient to have computer access to some records.

Also, each operator must provide the commission with a list of customers that it believes may be master meter operators. This assists the commission in its inspections and allows the commission to open communication with these master meter operators to ensure that they are aware of the safety regulations they must follow.

135.001 – Scope of part addition

This change clarifies that all gathering lines that operate under pressure are within the commission's jurisdiction.

135.003 – Definition additions

Six definitions were added:

Acceptable leak detection device The definition is created rather than having the full description included in multiple places in the rule language.

Business district – This is added to clarify the phrase.

Commission – This is added as a "shorthand" way of referring to the Public Service Commission.

Distribution center – This is added to aid in defining transmission lines, the definition for which uses this previously undefined term.

Master meter system – This incorporates the federal definition and adds a clarification that is in line with the current federal enforcement policy.

Qualified person – This is added to clarify the phrase.

135.013 – General additions

Under this provision, utilities must conduct certain surveys of master meter operator systems and master meter system operators must have certain repairs done. This will aid in inspections and commission work with master meter operators. It will also increase public safety. The requirement is intended to attach to the facility, not the owner. So, if a utility performs inspections of a facility and then the facility is sold, the utility does not have to do them again for the new owner.

135.055 – Steel pipe addition

This was deleted as the process mentioned is no longer used to make steel.

135.103 – General addition

Cast iron pipes present a major leak problem due to frost heave. Except for maintenance of old mains, no new cast iron pipe has been installed since the 1950s. This provision has been changed to state that operators may no longer install or operate cast iron pipe. It specifically refers to pipe and does not prohibit the installation or use of cast iron components such as valves and fittings.

135.161 – Supports and anchors addition

Under this provision, builders must use non−combustible materials when constructing regulator station buildings. This matches a requirement that already exists for compressor stations. This provision ensures greater safety in case of a fire at a regulator station.

135.173 – Compressor stations: ventilation addition

This was deleted as unnecessary because it is now covered by other local, state and federal codes.

135.181 – Distribution line valves additions

(1) This provision will ensure that relighting occurs in a timely manner after an outage occurs. There is a federal requirement that valves be placed to assist in a quick shutdown. In Wisconsin, due to the winters, it is also important to have guidelines for quick relighting.

(2) This change removes as unnecessary a decades−old grandfather clause.

135.195 – Protection against accidental overpressuring additions

(4w) (i) This was deleted as unnecessary because these devices are no longer used.

(dw) This was added to ensure that the gas system operates during flood emergencies.

(ew) This was added to ensure that there is no overpressuring in case of monitoring regulator failure.

135.197 – Control of the pressure of gas delivered from high−pressure distribution systems additions

(fw) Under this provision, operators are required to have a monitor that indicates when a service regulator fails so that the operator knows there is no overpressure protection there. This is required immediately for new installations, and provides 10 years for existing regulators.

(gw) This provision is necessary given the climate and conditions in Wisconsin.

135.199 – Requirements for design of pressure relief and limiting devices additions

(2)(gw) This adds a standard for venting gas into the atmosphere in a safe manner and in a manner that helps prevent tampering.

(jw) This language clarifies that the provision only applies to district regulator stations, not all regulator stations. Operators with district regulator stations using the operator monitor form of regulation must provide a method to indicate the failure of the operating regulator, and must check district regulator monitors once a month.

135.225 – Welding procedures addition and 135.227 – Qualification of welders

These provisions eliminate Appendix C of 49 CFR 192 and section IX of the ASME Boiler and Pressure Vessel Code as options for qualifying welders. Instead, the rule requires welders to be qualified under requirements developed specifically for pipeline welders.

135.273 – General

This provision prohibits the use of a compression−style coupling to join steel pipe during initial construction or as a permanent repair.

135.279 – Copper pipe addition

This provision is eliminated as unnecessary because the type of piping addressed is no longer used.

135.305 – Inspection General

This provision clarifies current inspection standards.

135.323 – Casing addition

This provision about casings is deleted because it is redundant.

135.325 – Underground clearance additions

This provision applies the same underground clearance standard to mains that currently exists for transmission lines. It also clarifies that a building may not be put over an existing in−service main or transmission line. Currently, the provision only states that a line cannot be put beneath a building.

135.327 – Cover additions

Under this provision, an operator must ensure that code−required coverage of mains and transmission lines is maintained when a road is reconstructed.

135.351 – Scope additions

Under this provision, an operator must have written procedures for the installation and inspection of service lines, regulators and meters.

135.353(aw) – Customer meters and regulators: location addition

Under this provision, for a new installation an operator must install a meter outside and as close as possible to the building wall, unless doing so is physically impracticable.

135.361 – Service lines: installations additions

This provision applies the 12−inch clearance requirement to service lines and requires that the code−required coverage is maintained when a road is reconstructed.

135.365 – Service lines: location of valves additions

This provision clarifies when an operator must have an outside valve in a readily accessible location and when an operator must install an underground service valve as close as possible to the main.

135.375 – Service lines: plastic addition

This provision has been deleted because it is redundant. It is in the federal code now.

135.379 – New service lines not in use additions

Under this provision, an operator may not turn on gas service until a customer is ready to use it.

135.461 – External corrosion control: protective coating addition

Under this provision, where appropriate given soil conditions, an installer must use a current drain test to inspect a coating after using a boring, driving or similar installation method.

135.465 – External corrosion control: monitoring addition

Under this provision, an operator must take remedial action within 12 months of discovering problems within the cathotic protection system.

135.481 – Atmospheric corrosion control: monitoring addition

Under this provision, an operator must take remedial action within 12 months of discovering atmospheric corrosion. This change is made because, generally, pipeline repairs must be made by the next reporting cycle. While in many cases this is 12 months, atmospheric corrosion inspections only take place every 3 years. This is too long to wait for repairs to be made, so 12 months was chosen.

135.503 – General requirements additions

Under this provision, an operator must pressure test all pipelines to a minimum of 90 p.s.i.g., unless federal law requires more stringent testing.

135.506 – Strength test requirements for steel pipeline

This provision lowers the minimum test pressure for transmission lines from 90% of system maximum yield strength to 85%. Prefabricated assemblies and station piping are exempted from the testing requirement.

135.511 – Test requirements for service lines addition

This provision increases the minimum test pressure to 90 p.s.i. for reinstated service lines.

135.517 – Records additions

Under this provision, an operator must include the test date on each test record and keep the records as long as the pipeline is in service.

135.605 – Procedural manual for operations, maintenance and emergencies

Under this provision, operators must have a written quality control procedure for evaluating third parties performing operation and maintenance activities.

135.613 – Continuing surveillance additions

This change reduces the requirement for surveying when repaving to allow a recent prior test to suffice as the leakage survey. It also ends the requirement that property abutting streets be tested.

135.614 – Damage prevention program addition

Under this provision, all operators must report damage to a national central body (Common Ground Alliance), and information so reported must be available to the commission upon request.

135.615 – Emergency plans

Under this provision, an operator must respond immediately to reports of carbon monoxide. Also, an operator must meet different emergency response times for higher and lower density areas, and a report to the commission is required when response times significantly exceed the specified times.

135.623 – Maximum allowable operating pressure: low−pressure distribution systems addition

Under this provision, beginning in 2015 an operator may not operate a low−pressure distribution system.

135.705 – Transmission lines: patrolling additions

Under this provision, operators must clear and maintain transmission line rights−of−way.

135.706 – Transmission lines: leakage

Under this provision, all leak surveys of all transmission lines in all class locations must be conducted using an acceptable leak detection device. A vegetation survey is not acceptable.

135.707 – Line markers for mains and transmission lines addition

Under this provision, an operator must place a transmission line marker every quarter mile outside of urban areas.

135.721 – Distribution systems: patrolling addition

Under this provision, a utility must perform a hazard survey every three years if it is using an automated meter reading system. The utility must conduct that survey in a different year than the leak survey or atmospheric corrosion survey.

135.722 – Distribution mains: markers

Under this provision, an operator must place distribution main markers every quarter mile outside of urban areas.

135.723 – Distribution systems: leakage surveys additions

This provision clarifies leak survey requirements and requires that an operator perform a leak survey every 3 calendar years when an automated meter reading system is being used. It also specifies that a vegetation survey is not a sufficient leak survey.

135.724w – Further leakage survey after repair of leak

This provision specifies the time limit for performing a further check in an area after repairing a leak.

135.727 – Abandonment or deactivation of facilities addition

Under this provision, an operator must abandon facilities that have not been used for a certain period of time.

135.741 – Pressure limiting and regulating stations: telemetering or recording gauges addition

Under this provision, an operator must perform monthly examinations of regulators or monitors used as district regulators.

135.744w – Service regulators and associated safety devices: inspection and testing

Under this provision, an operator must test regulators upon installation and when a meter is changed or tested. If there are 2, then the operator must test each one.

135.747 – Valve maintenance: distribution systems addition

Under this provision, operators must partially operate distribution emergency valves, whether or not they are plastic, when inspecting. Once every five years, operators must inspect valves not inspected under a particular federal regulation.

135.753 – Caulked bell and spigot joints addition

This provision has been deleted as unnecessary because it applies to cast iron pipes, which are no longer allowed.

Comparison with existing or proposed federal regulations

The federal pipeline safety statutes may be found in 49 USC 60101 to 60133. The federal pipeline safety regulations may be found in 49 CFR 190 to 199.

Under an agreement with the US Department of Transportation, Office of Pipeline Safety, the commission enforces the federal pipeline safety regulations for Wisconsin's natural gas operators. As a result, the commission is required to, and has adopted, the federal pipeline safety regulations. Under the agreement with the Office of Pipeline Safety, the commission has the authority to make additions to the federal code that are more stringent than the federal standards. The commission has made a number of state additions to the federal code.

Comparison with similar rules in adjacent states

Adjacent states have also adopted the federal pipeline safety code. Minnesota has not made any state additions. Iowa has made two small additions, but they are not on topics where Wisconsin has done additions. Michigan has many additions, although they are predominantly in areas where Wisconsin has not done additions. Illinois has mostly service rules rather than pipeline safety rules. However, Wisconsin is not alone in having a number of additions to the federal code. Other states, such as Florida, South Carolina, Missouri, and Kentucky all have quite a few additions.

With the exception of Iowa, however, surrounding and nearby states have a higher number of pipeline incidents than Wisconsin. Wisconsin has 0.000352 incidents per mile of pipeline, Illinois has 0.000527, Minnesota has 0.000752, Michigan has 0.000762, and Ohio has 0.000587.

Effect on Small Business

This rulemaking will affect three small gas utilities. Each of these has revenues in excess of $5 million but has 25 or fewer employees. The contract between the federal department of transportation and the PSC requires that treatment be uniform across the state and across gas pipeline operators. As a result, the PSC cannot make special provisions for small business.

Initial regulatory flexibility analysis

This rulemaking will affect three small gas utilities. Each of these has revenues in excess of $5 million but has 25 or fewer employees. It will also affect many master meter system operators. The contract between the federal department of transportation and the PSC requires that treatment be uniform across the state and across gas pipeline operators. As a result, the PSC cannot make special provisions for small business.

Fiscal Estimate

There will be no appreciable increase in costs to any governmental body, small business, or gas pipeline operator as a result of this rulemaking.

Assumptions used in arriving at fiscal estimate

State fiscal effects

There are no estimated state fiscal effects from the proposed changes to the Gas Safety Rule (PSC 135).

The proposed Gas Safety rule adopts the most recent federal rule on gas pipeline safety as state rule. The proposed Gas Safety rule changes the date for federal rules adopted by reference from July 1, 2007, to the effective date of the proposed rule.

In addition, the proposed rule updates state additions to the federal rule making them consistent with revised federal rule and clarifying, where possible, the intent of the federal rule. Some examples include: under PSC 135.305, the state rule clarifies the intent of the federal inspection requirement by establishing conflict of interest provisions for third party contractors; under revised PSC 135.465 and 135.481, the state rule provides a specific time period for compliance with federal rule where none is explicitly provided in federal rule; and, in PSC 135.615, the state rule provides specific guidelines for the federal rule requirement of a "prompt and effective response."

Other proposed changes to the Gas Safety rule clarify the state's intent in the current rule. For example, in PSC 135.365, the revisions clarify which buildings require additional safety regulations because they are used for public gatherings by specifying an actual person−capacity number.

The revised Gas Safety rule includes one new regulation. Under the revised rule, gas operators who discover a leaking compression joint must replace it with a welded joint. A gas operator may temporarily repair a leaking compression fitting, rather than immediately replacing it, but the rule eliminates the use of compression joints as a permanent repair.

The revisions to the Gas Safety rule do not change the inspection and reporting workload for state staff because the changes clarify the intent of current regulations. Therefore, the revised rule is not anticipated to have a state fiscal effect.

Local fiscal effects

There are no estimated local fiscal effects from the proposed changes to the Gas Safety rule. Local governments are not generally gas operators subject to the Gas Safety rule, and local governments do not have gas pipeline safety enforcement duties. Therefore, the revised Gas Safety rule is not estimated to have a local fiscal effect.

Fiscal effect for gas operators

Gas operators are not estimated, as a group, to experience new net costs under the revised Gas Safety rule. Gas operators are already subject to the federal regulations the proposed rule incorporates. In addition, the majority of the changes to the rule do not add requirements absent under current federal or state rule. The changes make clear how gas operators are to comply with current federal and state rule. It is likely many gas operators already have procedures in place that comply with the updated state requirements. The proposed elimination of the use of compression fittings in gas lines is a new requirement for gas operators, but it is estimated to be cost neutral. Compression joints fail more quickly than welded joints and extra costs of replacing a compression joint with a welded joint in the short run are offset by saved excavation costs of more frequent repairs to a compression joint. Therefore, the revised Gas Safety rule is not estimated to have a fiscal effect.

State fiscal effect

None.

Local government fiscal effect

None.

Fund sources affected

Pro.

Affected chapter 20 appropriations

20.155 (1) (g)

Agency Contact Persons

Questions regarding this matter should be directed to Tom Stemrich, Program Manager for Pipeline Safety, at (608) 266−2800, or at tom.stemrich@wisconsin.gov.

Small business questions may be directed to Anne Vandervort at (608) 266−5814, or at anne.vandervort@wisconsin.gov.

Media questions should be directed to Teresa Weidemann−Smith, Communications Specialist, Governmental and Public Affairs, at (608) 266−9600.

Hearing− or speech−impaired individuals may also use the commission's TTY number: If calling from Wisconsin, use (800) 251−8345; if calling from outside Wisconsin, use (608) 267−1479.

Submittal of Proposed Rules to the Legislature

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

Technical College System Board
CR 10−096

Rule−making order revises Chapter TCS 17, relating to training program grants.

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.

Administration
CR 10−063

Creates Chapter Adm 24, relating to debarment, suspension and ineligibility of DOA contractors.
Effective 1−1−11.

Insurance
CR 09−096

and

CR 10−038

Creates section Ins 3.75, relating to continuation of group insurance policies.
Effective 1−1−11.

Insurance
CR 10−067

Revises section Ins 8.49 Appendix I, relating to small employer uniform employee application for group health insurance.
Effective 1−1−11.

Insurance
CR 10−068

Creates section Ins 3.33, relating to uniform questions and format for individual health insurance.
Effective 1−1−11.

Insurance
CR 10−076

Revises sections Ins 6.05 and 6.07, relating to filing of insurance forms and insurance policy language simplification.
Effective 1−1−11.

Insurance
CR 10−077

Revises Chapter Ins 51, relating to the risk−based capital of health insurers, property and casualty insurers and fraternal insurers.
Effective 1−1−11.

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board
CR 10−013

Repeals and recreates section MPSW 1.11, relating to psychometric testing.
Effective 1−1−11.

Natural Resources
Environmental Protection — General, Chs. NR 100—
CR 09−102

(DNR # DG−24−09)

Revises Chapter NR 140, relating to groundwater standards.
Effective 1−1−11.

Natural Resources
Environmental Protection — Air Pollution Control, Chs. NR 400—
CR 10−046

(DNR # AM−06−10)

Revising section NR 410 (3) and (4), relating to asbestos project inspection and notification revision fees and affecting small business.
Effective 1−1−11.

Natural Resources
Environmental Protection — Air Pollution Control, Chs. NR 400—
CR 10−047

(DNR # AM−09−10)

Revises Chapter NR 410, relating to fees for reviewing applications for construction of air pollution sources and affecting small business.
Effective 1−1−11.

Regulation and Licensing
CR 10−081

Revises Chapter RL 7, relating to the impaired professionals procedure.
Effective 1−1−11.

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