

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 96-176

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### 2. Form, Style and Placement in Administrative Code

a. The addition of the phrase “whether housed in a department facility or housed in a contract facility” in revised s. DOC 324.02 is redundant. It is clear from s. DOC 324.11 and the definition of “contract facility” in s. DOC 324.03 (2) that an inmate housed in a contract facility is in the custody of the department.

b. Revised s. DOC 324.04, relating to eligibility for work or study release status, contains in sub. (2) a provision relating to ineligibility that could be redrafted as an eligibility requirement, e.g. “(1) (d) Not have a record . . . .”

c. It appears that in SECTION 25, the provision being amended is s. DOC 324.06 (2), rather than s. DOC 324.06 (1).

#### 4. Adequacy of References to Related Statutes, Rules and Forms

a. Several provisions of Clearinghouse Rule 96-176 substitute new references to DOC rules for current references. However, several of the new references do not exist in the current Administrative Code. For example, the new references to various provisions of ch. DOC 309 in revised s. DOC 324.09 (4) (h) do not currently exist. Similarly, the references to ss. DOC 303.77 and 303.80 in revised s. DOC 324.13 (6) (intro.) and (a) do not exist.

b. In several provisions, a reference is made to a DOC rule section but the chapter rather than the section is identified. For example, see references to “s. DOC 303” in revised s. DOC

324.12 (1) (j) and “s. DOC 302” in revised s. DOC 324.13 (7). These references should be more specific.

c. The reference to the priority set forth in s. 303.065 (5), Stats., in revised s. DOC 324.09 (2) (intro.) is inappropriate as the statute deals with priorities relating to inmates’ salaries and the statutory list is not the same as the list in s. DOC 324.09 (4). Additional clarification is needed and, rather than a cross-reference to an inappropriate statutory formula, the rule revision should prioritize the investigation and determination process.

Similarly, the reference to s. 303.065 (5) (b), Stats., in revised s. DOC 324.10 (3) is inadequate. If the intent is to require the inmate to pay only the cost of transportation to the extent that sufficient funds are available after the priority schedule set forth in the statute has been complied with, this should be clearly expressed in the rule.

d. The reference to s. DOC 303.83 in revised s. DOC 324.13 (6) (b) should be to s. DOC 303.84.

##### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Current and revised ss. DOC 324.04 and 324.05 deal with eligibility for work or study release status and the procedure for application and approval for work or study release status. Under the current rules, the procedure under s. DOC 324.05 involves a determination as to whether an inmate meets the eligibility requirements of s. DOC 324.04. Under revised ss. DOC 324.04 and 324.05, an inmate may not apply for work or study release status unless he or she is eligible--essentially, putting the “cart before the horse.” Taken to its logical conclusion, the requirement in current and revised s. DOC 324.05 (2) that the social worker or designated staff member review the inmate’s application and report on the inmate’s eligibility could be eliminated, since only eligible inmates may apply.

b. The revision of s. DOC 324.05 (4) contains one of several examples of incomplete sentences that create ambiguities. The revised provision states: “The criteria set forth in ss. DOC 302.17 (5) and 302.17 (7) shall be considered in making the decision.” The question that comes to mind upon reading this statement is “what decision?”. Presumably, it is a decision to approve or deny the inmate’s application for work or study release. If that is the case, the sentence should state this. Additionally, the references to the criteria set forth in s. DOC 302.17 (5) and (7) appear to be incorrect as these provisions currently relate to interviews for security classifications.

c. Another example of an incomplete and ambiguous sentence is revised s. DOC 324.05 (5) which states: “Upon approval of the warden or superintendent, the work release coordinator shall be notified.” This sentence should be clarified by an explanation of what is being approved: “Upon approval of the application for work or study release . . . .” In addition, it should be written in the active voice to clarify who must notify the work release coordinator.

d. The phrase “or wherever a potential conflict exists” in revised s. DOC 324.07 (3) is ambiguous. The phrase would be clearer if the phrase “any place where” were substituted for the word “wherever.”

e. Throughout Clearinghouse Rule 96-176, a reference to “facility staff” is substituted for a specific assignment of responsibility to a particular entity, such as the Program Review Committee or the warden or superintendent. The general reference to “facility staff” is likely to create an ambiguity in the future. Obviously, not all staff of a facility (e.g., janitorial, cleaning, cooking) is intended to be vested with the authority set forth in these various rule provisions.

f. Revised s. DOC 324.12 (1) (b) contains a reference to “weapons.” Additional clarification, perhaps a definition, is needed in order to understand what is meant by this term.

g. The first sentence of revised s. DOC 324.13 (3) refers to a “violation.” However, at this point in the provision, it is not clear to what violation the rule is referring. The first sentence of sub. (3) should be revised to reference the subsequent list of violations or placed after the list of violations.