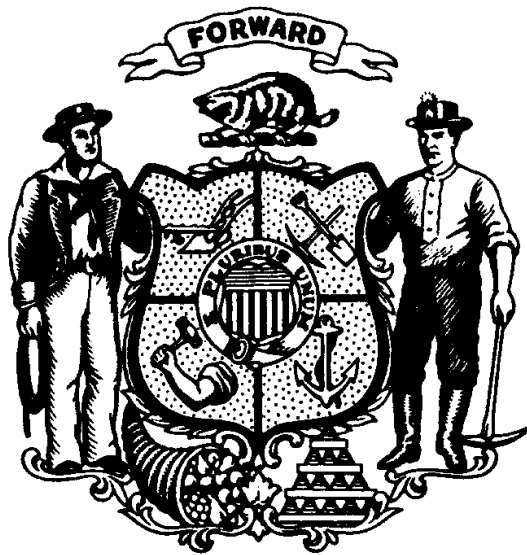


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 500**



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## EMERGENCY RULES NOW IN EFFECT

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

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

*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, 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.*

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### EMERGENCY RULES NOW IN EFFECT

#### Department of Commerce

**(Fee Schedule, Ch. Comm 2)  
(Credentials, Ch. Comm 5)  
(Elevators, Ch. Comm 18)**

Rules adopted revising **chs. Comm 2, 5 and 18**, relating to inspection of elevators and mechanical lifting devices.

#### Finding of Emergency

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

The Department inspects elevators and mechanical lifting devices to ensure these units are installed and operating in accordance with the elevator safety rules. The Department is required to inspect both new and existing elevator installations. Due to the increased number of elevators and mechanical lifting devices installed in new construction, the Department has not been able to keep up with all of its required inspections. To ensure that the citizens of Wisconsin are safe when using elevators and other mechanical lifting devices, the Department must increase the number of people performing these safety inspections.

The Department rules relating to fees, certification, and inspection procedures are being modified to permit additional individuals to perform inspections of elevators and other mechanical lifting devices. The Department proposes to fund additional inspections by amending its fees to match Department

expenses. Plan review and certificate of operation fees would be lowered. Inspection fees would be raised.

**Publication Date:** May 4, 1997  
**Effective Date:** June 1, 1997  
**Expiration Date:** October 30, 1997  
**Hearing Date:** July 29, 1997

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### EMERGENCY RULES NOW IN EFFECT (3)

#### Department of Corrections

1. Rules adopted creating **ch. DOC 304**, relating to inmate secure work groups.

#### Finding of Emergency

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

Effective June 1, 1997, appropriations will be made available to the Department of Corrections for the establishment of secure work groups. Section 303.063 (2), Stats. requires that if the Department establishes a secure work program, the Department shall, before implementing the program, promulgate rules specifying the procedures and regulations relating to the program. The Department has just begun the permanent rule process for establishing the administrative rules for the secure work program. It typically takes nine months for a permanent administrative rule to be promulgated from the time the permanent rule making process begins.

The Department needs to adopt administrative rules regarding the organization and operation of the secure work group program in order to have rules in place which will comply with Sec. 303.063 (2), Stats. The rules will provide for the protection of the public, the correctional officers and the inmates by providing the requirements for participation in the program as well as providing for safety and security concerns.

An emergency currently exists as the prison population is idle and needs secure work groups to provide inmates work opportunities, to prepare inmates for work opportunities upon release to the community, and to reintegrate inmates into the community.

**Publication Date:** May 30, 1997  
**Effective Date:** May 30, 1997  
**Expiration Date:** October 28, 1997  
**Hearing Dates:** August 25, 28 & 29, 1997

[See Notice this Register]

2. Rules adopted creating **ch. DOC 332**, relating to registration and community notification of sex offenders.

#### Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: The legislature has directed the department to implement programs for sex offender registration and community notification by June 1, 1997. Emergency rules are necessary to implement the

June 1, 1997, timeline mandated by the legislature, inform sex offenders of registration procedures, and inform law enforcement, victims and the public of the right to access information under the procedures designed by the department. Emergency rules are necessary to implement the June 1, 1997, timeline established by the legislature while permanent rules are developed and promulgated.

**Publication Date:** June 1, 1997  
**Effective Date:** June 1, 1997  
**Expiration Date:** October 30, 1997  
**Hearing Dates:** August 27, 28 & 29, 1997  
 [See Notice this Register]

3. Rules adopted revising **ch. DOC 310**, relating to inmates complaint review system.

### Finding of Emergency

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

There is a Corrections Complaint Examiner with two investigator positions and a program assistant position at the Department of Justice. The number and placement of these Corrections Complaint Examiner positions have been in effect for years. At the present time there is a substantial backlog of approximately 3,000 inmate complaints which need to be reviewed by the Corrections Complaint Examiner. The Department of Justice's position is that it will no longer do the Corrections Complaint Examiner function.

The Department must change its administrative rule to reflect the placement of the Corrections Complaint Examiner function from the Department of Justice to the Department of Corrections. The Department must also change its administrative rule regarding inmate complaints to make the system more efficient as a substantial backlog now exists, and there will be no new positions at the Department of Corrections to do the work of the Corrections Complaint Examiner.

The Department's purpose in the inmate complaint review system is to afford inmates a process by which grievances may be expeditiously raised, investigated, and decided. An efficient inmate complaint review system is required for the morale of the inmates and the orderly functioning of the institutions. An emergency exists due to the current backlog and the proposed moving of the function which will require the Department of Corrections to do the work of the Corrections Complaint Examiners with no new positions.

**Publication Date:** August 4, 1997  
**Effective Date:** August 4, 1997  
**Expiration Date:** January 2, 1998

## EMERGENCY RULES NOW IN EFFECT

### *Health & Family Services*

**(Management, Policy and Budget, Chs. HSS 1—)**

Rules adopted revising **ch. HSS 1**, relating to parental liability for the cost of care for children in court–ordered substitute care.

### Exemption From Finding of Emergency

The Legislature in s. 9126 (2z) of 1993 Wis. Act 481 directed the Department to promulgate rules required under s. 46.25 (9) (b), Stats., by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency.

### Analysis

Section 46.10 (14) (b), Stats., as created by 1993 Wis. Act 481, requires that parental support for court–ordered placements under s. 48.345, Stats., for children found to be in need of protection or services, and s. 938.183 (2), 938.34, 938.345 or 938.357, Stats., for youth adjudged delinquent, be established according to the child support percentage of income standard in ch. HSS 80, and s. 46.25 (9) (b), Stats., as created by Wis. Act 481, directs the Department to promulgate rules, separate from ch. HSS 80, for the application of the child support percentage of income standard to court–ordered substitute care cases. The rules are to take into account the needs of any person, including dependent children other than the child going into care, whom either parent is legally obligated to support. The rules proposed here will address these and other issues related to support for children in court–ordered substitute care.

This order creates s. HSS 1.07 relating to parental support for children in court–ordered substitute care and makes related changes in ss. HSS 1.01 to 1.06. However, if a child in care has income or assets, the payment requirements will continue to be assessed according to s. HSS 1.03.

**Publication Date:** January 22, 1997  
**Effective Date:** January 22, 1997  
**Expiration Date:** June 21, 1997  
**Hearing Date:** April 8, 1997  
**Extension Through:** August 31, 1997

## EMERGENCY RULES NOW IN EFFECT

### *Health and Family Services*

**(Health, Chs. HSS 110—)**

Rules adopted revising **ch. HSS 163**, relating to certification for lead abatement work and lead management activities.

### Finding of Emergency

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

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage, and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, and the brain in particular, and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to have birth defects, mental retardation or behavioral disorders, or to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead–based paint. When lead–based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards in order to determine the appropriate method of hazard reduction or abatement, it is imperative that persons who provide lead hazard evaluation and other lead management services be properly trained to ensure accurate lead inspection or assessment results. A reliable lead inspection or assessment is necessary to ensure a lead–safe environment for building occupants, especially children under the age of six, who are the most vulnerable population affected by lead–based paint and lead–contaminated dust and soil.

Under s. 254.176, Stats., the Department may establish training and certification requirements for any person who performs or



supervises lead hazard reduction or lead management. In addition, s. 254.178, Stats., states that no person may advertise or conduct a training course in lead hazard reduction or lead management that is represented as qualifying persons for state certification unless the course is accredited by the Department.

In 1993, the Department created ch. HSS 163, Wis. Adm. Code, Certification for Lead Abatement and Other Lead Hazard Reduction, to regulate the training and certification of lead abatement workers and supervisors and to accredit the corresponding training courses. Rules were needed to meet eligibility requirements for a \$6 million federal Department of Housing and Urban Development (HUD) grant to fund lead hazard reduction in low and moderate income housing where children under the age of six are found to have elevated blood lead levels.

Development of rules for training and certifying lead management professionals, including lead inspectors, risk assessors, and project designers, and for accrediting the corresponding courses, was postponed pending publication of U.S. Environmental Protection Agency (EPA) lead training and certification regulations. Initially expected in June 1994, these EPA regulations were not published until August 29, 1996.

Since most lead management work to date has been associated with elevated blood lead level investigations conducted by state and local government employees who received appropriate training from EPA regional lead training centers, the delay in lead management rules was not a health hazard. The creation of the private inspection and risk assessment service market resulting from new federal HUD/EPA disclosure regulations, however, poses a health hazard if that market is not properly regulated.

Joint HUD/EPA regulations (24 CFR Part 35 and 40 CFR Part 745) now require that landlords and home sellers disclose the known presence of lead in rental units and homes being sold. These regulations took effect September 6, 1996, for owners of more than four dwelling units and December 6, 1996, for owners of four or fewer dwelling units. In addition, a home buyer is allowed 10 days to obtain a lead inspection or risk assessment before final obligation to purchase a home under a signed offer to purchase.

Due to the lack of state–accredited training courses and state–certified lead management professionals to fill the demand, lead management services are being offered by persons who may not possess appropriate education, experience or training. Unqualified lead inspectors and risk assessors can have an adverse effect on the state’s residential marketplace. Based on an inaccurate inspection, a mortgage company could deny a mortgage loan, a home sale could fall through, or a property owner could expend large sums of money for unnecessary lead abatement actions. Even worse, the health of children may be jeopardized by erroneous findings that a lead hazard is not present, which can result in improper handling of lead–based paint materials.

HUD recently announced it was awarding the State of Wisconsin and the City of Milwaukee additional lead hazard reduction grants totaling over \$6.5 million. The grants require that money be disbursed only for lead–based paint activities performed by state–certified persons who have completed state–accredited lead training courses. Since Wisconsin does not yet certify lead inspectors, risk assessors, or project designers, grant mandates cannot be fully met, which could lead to funding difficulties and delay vital abatement activities.

This emergency order amends ch. HSS 163 to require accreditation of lead inspector, risk assessor and project designer training courses and, beginning April 19, 1997, certification of lead inspectors, risk assessors and project designers. In addition, references to “lead abatement or HUD–funded lead hazard reduction” have been changed to add lead management services. The order also adds accreditation and certification fees.

These rule changes are being published by emergency order to ensure, through Department certification and accreditation, that persons providing lead management services, including lead

inspections, risk assessments and project design, are appropriately trained and qualified.

Publishing these rules as emergency rules also enables the State of Wisconsin and the City of Milwaukee to implement the federal grants which require that only trained and certified lead professionals perform lead hazard evaluations and lead hazard reduction and abatement.

**Publication Date:** February 18, 1997  
**Effective Date:** February 18, 1997  
**Expiration Date:** July 18, 1997  
**Hearing Date:** March 18, 1997  
**Extension Through:** September 15, 1997

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## EMERGENCY RULES NOW IN EFFECT (4)

### Commissioner of Insurance

1. A rule adopted creating s. **Ins 3.46 (18)**, relating to the requirements for tax deductible long term care insurance.

### Finding of Emergency

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

The recently passed federal “Kassebaum–Kennedy” law, P.L. 104–191, set certain standards for allowing favorable tax treatment of long term care insurance policies. The existing Wisconsin administrative rules pertaining to long term care do not meet these criteria and require changes. These changes will allow tax deductible long term care insurance policies to be sold to Wisconsin residents as soon as possible.

**Publication Date:** December 20, 1996  
**Effective Date:** January 1, 1997  
**Expiration Date:** May 31, 1997  
**Hearing Date:** February 19, 1997  
**Extension Through:** September 27, 1997

2. Rule was adopted revising s. **Ins 18.07 (5) (bg)**, relating to an increase in 1997–98 premium rates for the health insurance risk–sharing plan.

### Exemption From Finding of Emergency

Pursuant to s. 619.14 (5) (e) Stats., the commissioner is not required to make a finding of an emergency to promulgate this emergency rule.

### Analysis Prepared by the Commissioner of Insurance

#### 1996–97 Premium Adjustments

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk–Sharing Plan (“HIRSP”) board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles and must be set at 60% of HIRSP’s operating and administrative costs. This rule adjusts the premium rates for the period of July 1, 1997 to June 30, 1998 for persons entitled to a premium reduction under s. **Ins 18.07 (5) (bg)**. The reduced premium rates are calculated by applying the percentages mandated by s. 619.165 (1) (b), Wis. Stats., to the rate that a standard risk would be charged under an individual policy providing substantially the same coverage and deductibles as provided under the plan. This

adjustment represents an average 5.8% increase in premium payments over the most recent rates.

**Publication Date:** May 16, 1997  
**Effective Date:** July 1, 1997  
**Expiration Date:** November 29, 1997  
**Hearing Date:** June 30, 1997

3. A rule was adopted repealing **s. Ins 3.46 (18) (d)**, relating to the requirements for tax deductible long term care insurance policies.

### Finding of Emergency

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

These changes would repeal the current requirement in the existing emergency rule which requires the offer of a non-tax qualified plan in each solicitation of a tax-qualified plan. After the public hearing on the permanent rule, it was determined that this requirement is no longer needed. The permanent rule was submitted to the legislature on May 30, 1997 with this provision deleted. This procedure to modify the emergency rule was presented to JCRAR at the hearing to extend the time period the emergency rule is effective.

**Publication Date:** June 13, 1997  
**Effective Date:** June 13, 1997  
**Expiration Date:** July 29, 1997  
**Extension Through:** September 27, 1997

4. Rules adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees calculation of adding certain physician specialties and UW hospital and clinics residents' fees.

### Finding of Emergency

The deputy commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The deputy commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule no. 97-71, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1997. The permanent rule was delayed pending legislative action on Senate Bill 145 which, if passed, will require a lowering of the fund fees originally proposed by the fund's board of governors. Senate Bill 145 may still reach the Senate floor this legislative session but, in all likelihood not before July 1, 1997, when this fee rule must be in effect. Assembly Bill 248, the Assembly bill which mirrors Senate Bill 145, passed the Assembly overwhelmingly.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 15, 1997. Because the provisions of this rule first apply on July 1, 1997, it is necessary to promulgate the rule on an emergency basis. A hearing

on the permanent rule, pursuant to the published notice was held on May 30, 1997.

**Publication Date:** June 20, 1997  
**Effective Date:** June 20, 1997  
**Expiration Date:** November, 18, 1997

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## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

#### **(Fish, Game, etc., Chs. NR 1--)**

Rule adopted creating **s. NR 27.07**, relating to notice of receipt of an application to incidentally take an endangered or threatened species.

### Exemption From Finding of Emergency

1995 Wis. Act 296 establishes authority in the department of natural resources to consider applications for and issue permits authorizing the incidental take of an endangered or threatened species while a person is engaged in an otherwise lawful activity. Section 29.415 (6m) (e), Stats., as created, requires the department to establish by administrative rule a list of organizations, including nonprofit conservation groups, that have a professional, scientific or academic interest in endangered species or in threatened species. That provision further provides that the department then give notification of proposed takings under that subsection of the statutes to those organizations and establish a procedure for receipt of public comment on the proposed taking.

The proposed rule lists a number of organizations the department is familiar with as being interested in endangered and threatened species; a notification procedure to be used to notify them, and others, of a proposed taking; and a public comment procedure to be used for consideration of public comments. The notification procedure is not limited to mail distribution, but is broad to allow other forms of notification, such as electronic mail.

**Publication Date:** November 18, 1996  
**Effective Date:** November 18, 1996  
**Expiration Date:** See section 12m, 1996 Wis. Act 296  
**Hearing Date:** January 14, 1997

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Public Instruction*

1. Rules adopted revising **ch. PI 35**, relating to the Milwaukee private school choice program.

### Finding of Emergency

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

In his ruling, effective August 15, 1996, Judge Higginbotham prohibited the expansion of the Milwaukee private school choice program to religious private schools provided for under 1995 Wis. Act 27. On January 15, 1997, Judge Higginbotham determined that all other stipulations under the Act are allowed to continue until June 1997. At that time all of the provisions under the Act are suspended and the program reverts to previous statutory language.

Since the provisions under the Act (except for the participation of religious schools) are to be implemented for the remainder of the 1996-97 school year, rules must be in place as soon as possible in

order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as provided for under the Act. The requirements established under this rule have been discussed with the private schools and initial indications reflect an acceptance of these provisions.

Since the private school choice program has yet to be reviewed by the Court of Appeals and possibly the Supreme Court, only emergency rules will be promulgated at this time in order to implement the provisions under the Act through the end of the 1996–97 school year. Permanent rules will be developed when judicial review is finalized.

**Publication Date:** February 19, 1997  
**Effective Date:** February 19, 1997  
**Expiration Date:** July 19, 1997  
**Hearing Date:** April 1, 1997  
**Extension Through:** August 30, 1997

- Rules adopted revising **chs. PI 3 and 4**, relating to teacher certification requirements and certification program requirements.

### Finding of Emergency

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

Proposed permanent rules were submitted to the Wisconsin Legislative Council on May 27, 1997. Most of the modifications made under the proposed permanent and emergency rules clarify, eliminate redundancy, and streamline current requirements to make the provisions under ch. PI 3 and 4 easier to read, understand, and implement. The rules also provide for consistency with other state agency licensure activity.

In order for teachers to apply for or renew specified licenses (license are issued July 1 through June 30) and for universities to have program requirements in place in time for the upcoming school year, rules must be in place as soon as possible.

**Publication Date:** July 1, 1997  
**Effective Date:** July 1, 1997  
**Expiration Date:** November 29, 1997

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## EMERGENCY RULES NOW IN EFFECT (2)

### Department of Revenue

- Rules were adopted amending **s. Tax 11.05 (2)(s)** and revising **s. 11.86 (6)**, relating to sales and use tax treatment of landscaping services.

### Finding of Emergency

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

Sections Tax 11.05 (2)(s) and 11.86 (6), Stats., state that landscaping services (e.g., planting, mowing, and fertilizing grass) are only taxable when they are performed in developed areas. Similar services performed in undeveloped areas (e.g., along highways) were determined by the department to not be landscaping services and therefore, the sale of such services was not subject to sales or use tax.

In case of the *Straight Arrow Construction Company, Inc. v. Wisconsin Department of Revenue* (8/28/96 and 4/4/97, Docket#93–S–569), the Wisconsin Tax Appeals Commission held

that there was no statutory basis for the distinction made by the department that certain services performed in developed areas were landscaping while the same services performed in undeveloped areas were not landscaping.

It necessary to promulgate this rule order to remove any threat of estoppel arguments and revenue loss to the state as a result of information contained in these rules that implies planting, mowing, fertilizing, and similar services performed in undeveloped areas are not taxable.

**Publication Date:** May 18, 1997  
**Effective Date:** May 18, 1997  
**Expiration Date:** October 16, 1997  
**Hearing Date:** July 29, 1997

- Rules adopted repealing **ch. ATCP 53** and creating **ch. Tax 53**, relating to increasing plat preview fees to cover all of the current costs of activities and services provided by the department under ss. 70.27 and 236.12, Stats.

### Finding of Emergency

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

For the past three years, program costs have out paced revenues received. The Plat Review section has relied on their substantial cash balance to cover the difference. Projections indicate that cash reserves will be depleted within the next year or earlier. Without a plat review fee increase significant cutbacks in service to customers, the public, other state agency programs, and local units of government will be necessary. With such cut-backs state certified plats with saleable but not buildable lots could result. It should be noted that this program has not had a rate increase since 1985.

In order to address this problem, an administrative rule is in the process of being promulgated. Due to the complexities of where the Plat Review section physically resides (DATCP), who has program responsibility for it, combined with the 1996 Memorandum of Understanding between the Department of Revenue and the Department of Commerce, the administrative rule process has taken longer than anticipated and it is expected that the rule will not be completed for another 90 days.

In order to ensure that funding will be sufficient and that services to the citizens of this state remain uninterrupted, an emergency rule is necessary. In particular, this rule addresses the following needs:

- Ch. ATCP 53 is repealed.
- Ch. Tax 53 is created. Under this rule certain fees charged for plat review are increased.

**Publication Date:** June 1, 1997  
**Effective Date:** June 1, 1997  
**Expiration Date:** October 30, 1997  
**Hearing Date:** July 11, 1997

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## EMERGENCY RULES NOW IN EFFECT

### State Fair Park Board

Rules adopted revising **chs. SFP 2 and 7**, relating to regulation of activities at the state fair park and revising bond schedule.

### Finding of Emergency

The Wisconsin State Fair Park Board finds that an emergency exists and that the adoption of rules is necessary for the immediate preservation of the public peace, health, safety and welfare of its citizens. The facts constituting this emergency are as follows:

During the annual State Fair, which is scheduled to begin on July 31, 1997, the Wisconsin State Fair Park is host to over 100,000 people per day and millions of dollars in merchandise and property. Initially, chapters SFP 1–7 were designed primarily to protect the property of the State Fair Park.

However, crime patterns at the State Fair Park have changed dramatically since those rules were adopted in 1967. With the increases in attendance and number of events in the intervening years, the number and severity of crimes against State Fair visitors, patrons, and property have necessarily increased. Also, a general rise in gang–related activity at Park events and during skating hours at the Pettit National Ice Center has occurred over the last several years. Consequently, there is a greater need for Park Police Department arrest authority on the Park grounds in order to ensure prosecutorial cooperation by Milwaukee County.

Due to excessive workloads, the Milwaukee County District Attorney's Office and the Milwaukee County Circuit Court system are reluctant to process and charge offenders for relatively minor property–type acts prohibited under the current SFP rules. Area and suburban Milwaukee County Police Departments have alleviated similar problems by conforming their ordinances to the county and state codes, authorizing their Police Departments to make lawful standing arrests for acts which the county will prosecute.

The State Fair Park Board seeks the same level of cooperation from Milwaukee county by conforming its rules to the county code. Therefore, these proposed emergency rules prohibit such activities as loitering, spray painting, theft, battery, and resisting/obstructing an officer, as well as various weapons prohibitions. There is also included provisions to protect the police horses which are not only an integral part of Park enforcement but are also a major public relations tool. With these changes, the Park administration can ensure a safe and family–oriented environment at this year's State Fair and other Park events. It is necessary to use the emergency rule for processing the proposed rule change to Administrative Code, reference to the bail bond schedule, section 5, s. SFP 7.02. Section 5, s. SFP 7.02 is amended to repeal the old bond schedule and recreate the new bond schedule to align the bond code with the corresponding section in the Wisconsin Administrative Code to take effect before the 1997 Wisconsin State Fair begins on July 31, 1997.

The State Fair Park Board has begun the permanent rule process but the normal process will take between 6 and 9 months to complete. It is imperative to have these rules in place by the time of the 1997 State Fair.

These rules are therefore adopted as emergency rules to take effect upon publication in the official state newspaper and filing with the Secretary of State and the Revisor of Statutes as provided in s.227.24 (1) (c), Stats.

**Publication Date:** August 1, 1997  
**Effective Date:** August 1, 1997  
**Expiration Date:** December 30, 1997

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## EMERGENCY RULES NOW IN EFFECT

### *Department of Transportation*

Rules adopted revising **ch. Trans 300**, relating to school buses.

### Finding of Emergency

The Department of Transportation finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. The amendments are needed to assure that school bus operators can purchase school buses manufactured using the latest in construction technology and providing equal strength and safety. Currently, there are estimated to be 60 buses on order by operators. Without this emergency rule, these buses could not be used in Wisconsin when the school year begins in August 1997. Therefore,

schools will start using alternative vehicles (production vans) because of the unavailability of the smaller school buses built to the safer school bus standards.

**Publication Date:** July 1, 1997  
**Effective Date:** July 1, 1997  
**Expiration Date:** November 29, 1997  
**Hearing Date:** August 26, 1997  
 [See Notice this Register]

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## EMERGENCY RULES NOW IN EFFECT

### *Veterans Affairs*

Rule adopted creating **s. VA 2.01 (2)(b)18.**, relating to the health care aid grant program.

### Finding of Emergency

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

The department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2)(b)2., Wis. Adm. Code, the Department is restricted to a \$50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap.

The treatment plans typically encompass the removal of teeth with a resulting need for dentures. Failure to promptly provide denture could have a negative impact upon an individual's health. It is therefore necessary to assure that the Department has sufficient authority to pay for the dentures included in treatment plans already received during this fiscal year. The emergency rule cap will accomplish this goal.

**Publication Date:** April 7, 1997  
**Effective Date:** April 7, 1997  
**Expiration Date:** September 5, 1997  
**Hearing Date:** April 18, 1997

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Workforce Development*

(Economic Support, Chs. DWD 11–59)

1. Rules adopted renumbering **subch. VII of ch. HSS 55** and creating **s. DWD 56.08**, relating to the administration of child care funds and required parent copayments.

### Finding of Emergency

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

The Governor has directed the Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin Works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. The Governor has approved a new schedule for child care copayments

and this rule places the new schedule into operation. The use of an emergency rule allows the implementation of the new schedule immediately.

**Publication Date:** December 30, 1996  
**Effective Date:** December 30, 1996  
**Expiration Date:** May 29, 1997  
**Extension Through:** September 25, 1997

2. Rules were adopted creating **ch. DWD 12**, relating to Wisconsin Works program.

### Exemption From Finding of Emergency

The Legislature in s.275(3) of 1995 Wis. Act 289 permitted the Department to promulgate the rules required under ss. 49.143 to 49.157, Stats., as created by Act 289, by using emergency rulemaking procedures but without having to make a finding of emergency.

### Analysis Prepared by the Department of Workforce Development

Wisconsin Works (W–2), the replacement program for the Aid to Families with Dependent Children (AFDC) program, is based squarely on work. Rather than offering welfare checks to those who do not work, as AFDC does currently, W–2 offers participants the opportunity to move into the work world and become self-sufficient through employment.

These rules provide the administrative framework under which the Department will implement a W–2 pilot program in two counties, Fond du Lac and Pierce, effective March 1, 1997. As the pilot counties for the Work Not Welfare program which began January 1, 1995, these two counties have had experience in implementing major welfare reform efforts. The W–2 program includes work opportunities, job access loans, education and training activities to enhance employability, intensive case management, child care and child support enforcement and other employment supports such as transportation assistance and access to health care services under the Medical Assistance program.

Wisconsin Works (W–2) was authorized through enactment of 1995 Wis. Act 289 which Governor Thompson signed into law on April 25, 1996. Under s.49.141(2)(b), Stats., if a federal waiver is granted or federal legislation is enacted, the Department of Workforce Development could begin to implement W–2 no sooner than July 1, 1996 and must fully implement the W–2 program statewide in September 1997. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) was signed into law on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which ends the entitlement program under Title IV–A of the Social Security Act and creates a block grant program under which states receive monies to provide cash and other benefits to help needy families support their children while at the same time requiring families to participate in work program activities which will help them become self-sufficient. In general, a state may not use any part of the TANF grant to provide assistance to a family for more than 60 months.

States must ensure, under section 114 of P.L. 104–193, that families who meet the AFDC eligibility requirements in effect on July 16, 1996, have access to Medical Assistance. Wisconsin has not yet obtained the necessary waivers or federal legislation that would allow the implementation of the W–2 health plan. Therefore, W–2 participants who meet the July 16, 1996, AFDC eligibility requirements or are eligible under s.49.46 or 49.47, Stats., and the implementing administrative rules, Chs. HFS 101–108, administered by the Department of Health and Family Services, may apply and be determined eligible for Medical Assistance.

Under W–2, there will be a place for everyone who is willing to work to their ability. The program is available to parents with minor children, low assets and low income who need assistance in becoming self-sufficient through employment. The W–2 program provides cash benefits only for those individuals who participate in

W–2 employment and training activities. W–2 agencies have the option, for participants in a community service job or a transitional placement, to aggregate education and training hours for approved programs to allow an individual to participate in education and training activities for more than 10 or 12 hours per week within the first few months of participation. Each eligible W–2 applicant will meet with a Financial and Employment Planner (FEP) who will help the individual develop a self-sufficiency plan and determine their place on the W–2 employment ladder. The ladder consists of four levels of employment options, in order of preference: unsubsidized employment; subsidized employment through a trial job for those participants who need minimal assistance but where unsubsidized employment is not available; a community service job for those participants who need to practice work habits and skills necessary to move into unsubsidized employment; and transitional placement for those unable to perform independent, self-sustaining work. Individuals placed in a trial job will receive wages from an employer. Individuals placed in a community service job will receive a monthly benefit of \$555 and individuals placed in a transitional placement will receive a monthly benefit of \$518. W–2 participants are limited to 24 months in a single subsidized employment position category. Extensions may be granted on a limited basis when local labor market conditions preclude opportunities or when the participant has significant barriers which prevent him or her from obtaining unsubsidized employment. Child care is available for those individuals who have children under the age of 13 and need child care in order to work or participate in a W–2 employment position. The W–2 program will be administered by contracted agencies which may include counties, tribal agencies and private agencies in geographic areas determined by the Department.

These are the rules for implementation of the Wisconsin Works program. The rules include eligibility requirements for those individuals applying for a W–2 employment position or child care, time-limited benefits for participants in W–2 employment positions, good cause for failure or refusal to participate in W–2 employment positions or other required employment and training activities, how sanctions are applied for failure to meet the W–2 employment position participation requirements, and school attendance requirements under the Learnfare program for the children of W–2 employment position participants.

**Publication Date:** March 1, 1997  
**Effective Date:** March 1, 1997  
**Expiration Date:** July 29, 1997  
**Hearing Dates:** May 21 & 28, 1997  
**Extension Through:** September 27, 1997

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## EMERGENCY RULES NOW IN EFFECT

### *Workforce Development*

#### (Labor Standards, Chs. DWD 270–279)

Rules were adopted revising **ch. DWD 272**, relating to the minimum wage.

### Finding of Emergency

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

In addition to raising the minimum wage to \$4.75 per hour on October 1, 1996, and \$5.15 per hour on September 1, 1997, the federal Fair Labor Standards Act provides for an “opportunity wage” of \$4.25 per hour which may be paid by each new employer to a person under the age of 20 during the first 90 days of employment. The Department’s permanent rules to raise the state minimum wage contained provisions creating an opportunity wage that are the same as those of the federal law.

On April 10, 1997, the State Senate Committee on Labor, Transportation and Financial Institutions suspended the portions of [CR 96–181](#) relating to the opportunity wage. The Department proceeded with formal adoption of the provisions of the rule that were not suspended; the permanent rule changes will become effective on June 1, 1997. On April 17, 1997, the Joint Committee for Review of Administrative Rules (JCRAR) unanimously approved extension of the Department's emergency rule on minimum wage, which includes the provisions on the opportunity wage. The emergency rule extension lasts until June 27, 1997.

The respective votes of the two Legislative committees have caused uncertainty as to whether the provisions relating to the opportunity wage remain in effect through June 27, 1997, or expire on June 1, 1997. The JCRAR has met several times since the standing committee's suspension but its only action on this issue was to extend the emergency rule, which includes the opportunity wage provision. The legal interpretation from the Legislative Council as to the precedence of the emergency rule provision vs. the permanent rule provision has not been definitive.

It appears that the JCRAR will vote in June on the standing committee suspension of the opportunity wage provisions of the permanent rule. If the JCRAR does not concur in the standing committee's suspension, the Department will proceed to promulgate the opportunity wage provisions on a permanent basis. However, due to timelines required for promulgation of permanent rules, this provision would not likely take effect permanently until September 1, 1997. Thus, the delays in action coupled with interpretive uncertainty could result in a regulatory gap that would cause confusion amongst the state's employees and employers over the provisions in effect after June 1, 1997. The Department believes that such uncertainty throughout the state would be undesirable.

In absence of definitive legal opinion or action on the opportunity wage issue by the JCRAR, this emergency rule alleviates uncertainty as to whether the opportunity wage provisions are effective after June 1 by explicitly maintaining their effect. The Department will make every reasonable effort to comply with the JCRAR's intent once action is taken. If the JCRAR affirms the standing committee's suspension, the Department will immediately withdraw the provisions of this emergency rule. If the JCRAR does not affirm the standing committee's suspension, this emergency rule will prevent a gap in coverage of the opportunity wage between the date of JCRAR action in June and the effective date of permanent provisions on the opportunity wage.

This emergency rule also contains a provision that prohibits the displacement of an employee that occurs solely for the purpose of hiring an opportunity employee. This language is similar to a provision of the federal law and was included by the Department because the Senate Committee on Labor, Transportation and Financial Institutions asked that the state rule also contain this provision. This language was originally submitted to the Senate Labor, Transportation and Financial Institutions Committee as a germane modification to CR–96–181 on March 31, 1997. It was the

Department's intent to promulgate this provision as part of the permanent rule. However, this provision was inadvertently omitted from the final draft.

**Publication Date:** May 31, 1997  
**Effective Date:** May 31, 1997  
**Expiration Date:** October 29, 1997  
**Hearing Date:** August 12, 1997

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## **EMERGENCY RULES NOW IN EFFECT**

### ***Workforce Development*** **(Wage Rates, Chs. ILHR 290–294)**

Rules adopted revising **ch. ILHR 290**, relating to the determination of prevailing wage rates for workers employed on state or local public works projects.

### **Finding of Emergency**

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

On December 11, 1996, this Department adopted an emergency rule and began permanent rulemaking to amend the former ch. ILHR 290, Wis. Adm. Code, in accordance with 1995 Act 215, which enacted changes in the laws governing the determination of prevailing wage rates for state and local public works projects. Among the provisions of that emergency rule was a section on the classification of subjourneypersons.

The initial emergency rule will expire on May 10, 1997. The Department has developed a different provision on subjourneypersons which it is submitting for legislative committee review as a part of the permanent rule in its proposed final draft stage. In the meantime, it is necessary to have a formal policy on subjourneypersons in effect so that the Department may continue to issue wage determinations on state and local public works projects without causing the projects to be delayed. Therefore, the Department is adopting the new subjourneyperson policy, and related procedural provisions, as an emergency rule.

**Publication Date:** May 10, 1997  
**Effective Date:** May 10, 1997  
**Expiration Date:** October 8, 1997  
**Hearing Date:** June 19, 1997

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### *Agriculture, Trade & Consumer Protection*

**Subject:**

Chapter ATCP 48 – Relating to drainage districts.

**Description of policy issues:**

*Preliminary objectives:*

Clarify current rules to improve drainage district operations. Among other things, the rule amendments may address:

- ◇ Landowner rights to drainage.
- ◇ Drainage district “construction projects” requiring DATCP approval, including standards for approval.
- ◇ Standards and procedures for identifying, classifying or altering district drains, or removing drains from a drainage district.
- ◇ Standards and procedures for assessing benefits and costs to landowners in a drainage district, including the apportionment of costs between landowners.

*Preliminary policy analysis:*

Drainage districts are local government districts which are organized to drain lands for agricultural or other purposes. Land is drained by drainage ditches which cross individual property boundaries. Landowners in a district who benefit from drainage must pay assessments to cover the cost of constructing, maintaining and repairing the drainage system. Drainage districts have a major impact on land use, landowners and the environment.

A county drainage board operates all drainage districts created within a county. The county drainage board:

- Operates and maintains district drains and dams.
- Levies assessments against landowners who benefit from drainage (and awards damages to landowners who are adversely affected).
- Makes or recommends modifications to a drainage district.

Drainage district operations are governed by ch. 88, Stats. The Legislature recently made major changes to ch. 88, Stats., to expand the powers of county drainage boards and modernize the operation of drainage districts. The Legislature also gave DATCP new responsibility for regulating drainage district operations on a statewide basis. DATCP has adopted drainage district rules under ch. ATCP 48, Wis. Adm. Code, to implement the law changes. DATCP monitors drainage district operations for compliance with ch. 88, Stats., and ch. ATCP 48.

Since ch. ATCP 48 became effective in 1995, DATCP has been helping county drainage boards to revitalize and improve drainage district operations.

Drainage boards are currently working to:

- Recover or recreate lost drainage district records.
- Identify and document district boundaries, drains and drain profiles.
- Improve business and operational procedures.
- Establish up-to-date drainage benefit and cost assessments.
- Improve maintenance of district drains and drainage facilities.
- Review and act on proposed construction projects, in consultation with DATCP.

Based on experience to date, DATCP believes that some rule changes would help county drainage boards administer drainage districts more effectively, and would also help to prevent or resolve drainage disputes. Rule changes would establish new standards and procedures where necessary. They would also clarify and streamline current standards and procedures, and increase cost-effectiveness where possible. DATCP proposes to convene an advisory council of knowledgeable and interested persons to suggest possible rule changes.

*Policy alternatives:*

● Do nothing. Current ch. ATCP 48 would remain unchanged. The lack of clear standards in some areas could impair drainage district operations, adversely affect landowners, and make it more difficult to resolve drainage district disputes.

● Modify ch. ATCP 48 to eliminate uniform standards and reduce DATCP involvement in drainage district operations. This would increase local control over land use decisions. However, it could sacrifice state interests, erode protection for landowners, increase burdens on county drainage boards, and make it more difficult for county drainage boards to resolve drainage disputes.

**Statutory authority:**

The Department proposes to amend ch. ATCP 48 drainage district rules under authority of ss. 88.11 and 93.07 (1), Stats.

**Staff time required:**

The Department estimates that it will use approximately .5 FTE staff time to develop this rule change. This includes research, drafting, preparing related documents, holding public hearings, coordinating advisory council discussions, and communicating with affected persons and groups. The Department will assign existing staff to develop this rule. Additional staff may be needed to administer the rule.

### *Commerce*

**Subject:**

Chapters ILHR 50–64 -- Relating to building and heating, ventilating, and air conditioning.

**Description of policy issues:**

*Description of the objective of the rule:*

Section 101.02 (1) and (15), Stats., requires the Department to ascertain and adopt reasonable rules that will protect life, health, safety, and welfare within the commercial buildings included under the scope of the Building and Heating, Ventilating, and Air Conditioning Code, chapters ILHR 50 through 64. An overall review and update of the code is necessary because such an overview has not occurred since the late 1980's, and numerous changes in technology and construction practices have occurred since then. It is anticipated that the review of the Code will identify potential code revisions necessary to:

- ▶ Address code requirement clarity problems which have been discovered since the last complete code overview;
- ▶ Clarify standards for fulfilling the objective of protecting public health, safety, and welfare;
- ▶ Reflect new construction practices, products, standards, or materials, including fire prevention, fire containment, fire detection, fire suppression, and fire alarm systems;
- ▶ Address code requirements relative to safety, health, and welfare which are substantially different from the national model building codes; and
- ▶ Adopt the International Building Code which is expected to be published by the International Code Council in the year 2000.

*Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

Currently, the Building and Heating, Ventilating, and Air Conditioning Code, chapters ILHR 50–64, establishes statewide minimum design, construction and inspection standards for commercial buildings. The construction standards of the Code address such issues as:

- ☞ Life/safety concerns, including exiting in fire situations;
- ☞ Fire fuel contribution relative to a building’s class of construction and contents; and
- ☞ Structural capabilities and integrity, including those under fire conditions.

It is anticipated that the review will result in initial code revisions which will clarify fire separations, egress uniformity and fire construction standards. Without these revisions, the Department believes that the present code is so out–of–date as to leave designers and builders unsure of how to comply with the code, and unaware of current materials and standards. Avoiding these revisions would also cause the Department and local inspectors to be uncertain of how to administer and enforce the code. The work under this statement of scope is expected to result in more than one rule–making proposal to address the above–mentioned objectives.

**Statutory authority for the rule:**

Section 101.02 (1) —

Requires the Department to promulgate rules that establish reasonable standards for the design and construction of commercial buildings and their components.

Section 101.02 (15) —

Requires the Department to ascertain, fix, and order reasonable standards for the construction, repair, and maintenance of public buildings so as to be safe.

Section 101.14 (4) (a) —

Requires the Department to make rules requiring owners of places of employment and public buildings to install such fire detection, prevention or suppression devices as to protect the health, safety, and welfare of the occupants.

**Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

The following is the estimated work time that staff will be involved in the initial code change issues.

Advisory council meetings –		
Average of 50 hr. x 4 meetings	=	200 hr.
Code topics research, language drafts –	=	200 hr.
Hearings, responses, revisions, etc. –	=	200 hr.
<u>Environmental assessment –</u>	=	<u>100 hr.</u>
Total	=	700 hr.

The following is the estimated work time that staff will be involved in future multiple rulemaking packages between now and 2002 in order to implement adoption of the international building code.

Advisory council meetings –	=	1000 hr.
Code topics research, language drafts	=	1000 hr.
Hearings, responses, revisions, etc. –	=	1000 hr.
<u>Environmental assessment –</u>	=	<u>500 hr.</u>
Total	=	3500 hr.

**Commerce**

**Subject:**

Ch. Comm 87 — Relating to Wisconsin Fund — private sewage replacement or rehabilitation grant program.

**Description of policy issues:**

*Description of the objective of the rule:*

The rule revisions to this chapter will focus on providing a framework for the installation and monitoring of experimental POWTS (private on–site wastewater treatment system) to replace failing POWTS as required in s. 145.245 (6) (e), Stats. The grant funding tables will be revised to reflect current costs of allowable POWTS rehabilitation or replacement as required in s. 145.245 (7) (c), Stats. Other revisions include the clarification and modification of existing administrative functions.

*Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

a) Existing policies.

✓ Section 145.245 (6) (e), Stats., states in part: “The department shall promulgate rules that specify how the department will select, monitor, and allocate the state share for experimental private sewage systems that the department funds. . .” The Department has not promulgated the rules as required by the legislature when it amended s. 145.245, Stats.

✓ Section 145.245 (7) (c), Stats., states in part: “The department shall revise the grant funding tables when it determines that 60% of current costs of private sewage system rehabilitation or replacement exceed the amounts in the grant funding tables by more than 10%. . .” The existing rule contains funding tables that were last revised in 1991. The amounts are not within 50% of the cost of POWTS replacement.

✓ The existing rule does not allow POWTS certified inspectors to file maintenance inspection reports unless employed by a governmental unit.

✓ The existing rule requires an owner to sign a maintenance report.

✓ The existing rule limits when a determination of system failure must be made.

✓ The existing rule does not clearly state that grant eligibility is limited to 60% of actual replacement cost.

✓ The existing rule does not clearly identify an appeal process.

✓ The existing rule requires application to be made on forms furnished by the Department.

b) New policies.

→ The new rule would establish a procedure for funding the installation and monitoring of experimental POWTS that replace existing failing POWTS as required by s. 145.245 (6) (e), Stats.

→ The new rule would contain funding tables that are based on 60% of current actual costs of POWTS systems replacement as required by s. 145.245 (7) (c), Stats.

→ The new rule would allow any POWTS certified inspector to file maintenance inspection reports.

→ The new rule would eliminate the requirement that an owner sign the maintenance report.

→ The new rule would increase flexibility for owners and governmental units as to when a determination of system failure may be made.

→ The new rule would clearly state that grant eligibility is limited to 60% of actual replacement cost.

→ The new rule would identify an appeal process.

→ The new rule would allow applications to be made on forms acceptable to the Department.

c) Analysis of policy alternatives.

○ Continue existing policy. This would preclude funding of experimental POWTS as allowed by statute, would not allow updating of the grant funding tables as required by statute and would not allow several administrative changes that are designed to improve program delivery.

○ The proposed action: establishes an experimental POWTS funding program as allowed by statute, updates the grant funding tables as required by statute and modifies several administrative processes to give property owners and program administrators more flexibility and alternatives, while eliminating unnecessary requirements.



**Statutory authority for the rule:**

Section 145.245, Stats., provides the Department authority to implement and administer a financial assistance program to replace or rehabilitate failing private sewage systems.

**Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

The Department estimates that these rule revisions will require time of approximately 6 staff as allocated below:

Code Development Time	200 Hours
<u>Environmental Assessment Time</u>	<u>100 Hours</u>
<b>TOTAL TIME:</b>	<b>300 HOURS</b>

***Employe Trust Funds*****Subject:**

S. ETF 10.78 – Under certain circumstances the Department may waive the requirement for a court order appointing a legal guardian, and allow a natural or general guardian to apply for a WRS benefit on behalf of a ward.

**Description of policy issues:***Objectives of the rule:*

The rule is intended to eliminate the requirement for a legal guardian in most circumstances, while still retaining the Department's authority to require legal guardianship in cases where the Department determines that this is necessary and appropriate. This rule change would also bring the rule into harmony with s. 40.08 (9), Stats., which states that the Department may waive legal guardianship unless the guardian is someone other than a spouse, parent or other blood relative of an individual who has been adjudged mentally incompetent. The current rule conflicts with the statute because it abrogates a right conferred upon the Department in s. 40.08 (9), Stats.

*Policy analysis:*

Section ETF 10.78 mandates the Department to require a court order appointing a legal guardianship when a benefit payable to a minor or incapacitated individual is eligible for a benefit of \$5,000 or more. This can be a costly and cumbersome process, especially in certain states.

Section ETF 10.78 is most frequently invoked in situations where a minor child is the beneficiary of a deceased participant, and the Department requires the parents to go court to obtain legal guardianship of their minor children of whom they have custody. The sole purpose of their obtaining legal guardianship is to apply for a life insurance or WRS death benefit on behalf of their minor child(ren).

The Department's general policy is to provide efficient, customer-friendly service while safeguarding the rights and benefits of participants and their beneficiaries. As it is currently written, s. ETF 10.78 creates unnecessary barriers for the guardians of individuals applying for benefits and administrative burdens for the Department, while providing very little real protection for the potential payee.

*Policy alternatives to the proposed rule:*

Maintain a rule that conflicts with Wisconsin statutes and provides minimal protection for the potential payee and, per that rule, require legal guardianship in all cases where the benefit payable is \$5,000 or more.

**Statutory authority for rule-making:**

Section 40.08 (9), Stats.

**Staff time required:**

The Department estimates that state employees will spend 30 hours to develop this rule.

***Employe Trust Funds*****Subject:**

S. ETF 10.82 (2) – Determining what form of electronically and mechanically reproduced documents and signatures the Department of Employee Trust Funds will accept in lieu of an original document with an individual's original signature.

**Description of policy issues:***Objectives of the rule:*

The Department frequently receives various signed documents that are photocopies, transmitted via facsimile (fax) machine, have stamped rather than original signatures, etc. As technological capabilities continue to expand, there is potential for the Department receiving documents via E-mail and the internet. This rule is intended to provide clear guidance to the public and Department of Employee Trust Funds staff as to what form of documents and signatures the Department can accept in lieu of an original document with original manual signatures.

*Policy analysis:*

Section ETF 10.82 (2), now provides that specific documents received on specific Department fax machines approved by the Employee Trust Fund Board are deemed received on the date received via fax, provided that the Department receives the unaltered original documents within 14 calendar days after receipt of the fax document. This rule, as written, is difficult to administer, creates unnecessary barriers for our customers, and can result in adverse and inequitable situations for members if critical documents were inadvertently transmitted to a Department fax machine not approved by the Board as per s. ETF 10.82 (2).

The Department is also developing a home page on the internet. As this project progresses, the Department anticipates accepting key documents from WRS employers, participants and other individuals that are transmitted through this means. The current rule must be revised to allow the Department's processes to evolve along with our technology.

*Policy alternatives to the proposed rule:*

The alternative is to continue requiring members and their representatives to submit all documents as paper documents with original signatures, and to restrict the Department fax machines on which a faxed document can be received to preserve the original receipt date. This would preclude streamlining procedures and creating greater efficiencies for the public and the Department, and such efficiencies are critical in the current climate of dwindling resources.

**Statutory authority for rule-making:**

Section 40.03 (2) (i), Stats.

**Staff time required:**

The Department estimates that state employees will spend 75 hours to develop this rule.

***Natural Resources*****Subject:**

Ch. NR 149 – Relating to laboratory certification and registration.

**Description of policy issues:**

*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

Although no major revisions to the Code are planned at this time, there are several areas that need to be addressed to allow the program to function more efficiently. Several of these will create new policies or promulgate current Department practices. The Department intends to propose amendments to the fee structure for certified and registered laboratories. The proposed changes are not intended to increase the fees, but rather to distribute the cost of operating this fee-based program more equitably between in-state and out-of-state labs as well as between certified and registered laboratories.

Amendments to the rule will also:

- ▲ Create new certifiable tests where approved methods exist;

▲ Evaluate and revise requirements for performance evaluation samples;

▲ Specify requirements for satellite facilities;

▲ Create a stronger link between enforcement capabilities and violations of the Code; and

▲ Promulgate a new certification period running from Sept. 1 through August 31, to better accommodate the Department's billing cycle.

This action represents a change from past policy.

*Explanation of the facts that necessitate the proposed change:*

The largest changes from past policy will be the specifications of required performance evaluation samples and revision of the certification period. The first is necessary because when the program was created in 1986, test samples were only available for a limited number of analytes in wastewater and drinking water. Certification has since expanded to include many new tests in all matrices (groundwater, solid waste) and many more samples are available. Performance evaluation samples are a key component of determining a laboratory's ability to generate high-quality data. The change in certification period is necessary because it will give laboratories more time to submit acceptable performance evaluation sample results and pay their renewal fees. The program is currently constrained by the Department's consolidated billing cycle and the EPA's cycle for performance evaluation samples. In the past, this has resulted in delayed renewal of many labs' certification and registration.

**Statutory authority:**

Section 299.11, Stats.

**Anticipated time commitment:**

The anticipated time commitment is 441 hours. Three hearings are proposed to be scheduled during the week of January 12 to 16, 1998 in Madison, Eau Claire and Appleton.

### ***Physical Therapists Affiliated Credentialing Board***

**Subject:**

PT Code – Relating to clarification of administrative rules.

**Description of policy issues:**

*Objective of the rule:*

The changes being recommended relate to such technical matters as amending form, style, grammar or punctuation in order to improve readability, eliminate outdated provisions, and update citations to statutes for accuracy. Also, the changes update examination provisions and temporary certificate requirements and add which English equivalency examinations may be required.

*Policy analysis:*

⇒ Update citations referencing statutes which may have been renumbered, modified, or repealed.

⇒ Clarify the specific examination types.

⇒ Clarify "registration" or "licensure" status for renewal purposes.

⇒ Establish requirements to take additional English proficiency examinations.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) and 455.08, Stats.

**Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

10 hours.

### ***Revenue***

**Subject:**

S. Tax 1.13 – Relating to power of attorney requirements.

**Description of policy issues:**

*Objective of the proposed rule:*

The objective of the proposed rule is to:

1. Reflect a change in Department policy to accept legible photocopies or fax transmissions of power of attorney forms.
2. More clearly reflect the scope of the power of attorney requirement.
3. More accurately reflect the types of tax and the entities to which the power of attorney requirement applies.
4. Update language, format, and style per Legislative Council Rules Clearinghouse standards.

*Existing policies:*

The proposed rule reflects the Department's policy of providing accurate, up-to-date information regarding power of attorney policies, including a change in policy to accept photocopy or fax power of attorney forms.

*Policy alternatives:*

\* Do nothing. The rule will not reflect the change in Department policy regarding photocopy or fax power of attorney forms, the listing of types of tax and entities to which the power of attorney requirement applies will not be up-to-date, and the rule will not reflect Legislative Council Rules Clearinghouse standards relating to language, format, and style.

**Statutory authority:**

Sections 71.80 (1) (c), 77.96 (4), 78.79, 139.08, 139.39, 139.83 and 227.11(2) (a), Stats.

**Estimate of staff time required:**

The Department estimates that it will take approximately 30 hours to develop this rule order. Existing staff will be used to develop the order.

### ***Workforce Development***

**Subject:**

Ch. DWD 14 – Relating to electronic benefit transfer system for food stamps.

**Description of policy issues:**

*1. Description of the objective of the rule:*

Section 49.129 (7), Stats., directs the Department to promulgate rules for administration of an electronic benefit transfer (EBT) system for delivery of food stamp benefits, as an alternative to issuing food stamp coupons.

*2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

The Department administers the federal Food Stamp Program under contract with the federal government. Low-income people apply for food stamps at county departments of social services or human services and their eligibility and level of benefits are determined there. Currently the Department mails out food stamp coupons each month directly to recipients or to local agencies for pickup by recipients. Recipients exchange the coupons for eligible foods at participating food retailers.

The federal government since 1992 has been permitting states, and since 1996 has been encouraging states, to develop and operate electronic benefit transfer (EBT) systems for delivery of food stamp benefits, as an alternative to issuing food stamp coupons. Beginning October 2002, states will be required to have an EBT system for delivery of food stamp benefits.

Under an EBT system, a recipient is issued a plastic magnetic stripe card and a personal identification number (PIN) and has an account into which authorized food stamp benefits are posted. By means of the card and the PIN, the recipient authorizes transfer of food stamp benefits from the recipient's account to an authorized food retailer's account to pay for eligible food items. The recipient's account is debited for the amount of the purchase and the retailer's account is credited, without the exchange of money or coupons. Thus, the transaction and settlement processes function in similar fashion to a commercial debit card system.

On recommendation of the Legislative Council's Special Committee on Electronic Benefit Transfer System, the Legislature in May 1996 enacted 1995 Wis. Act 368, which created s. 49.129, Stats., relating to implementing electronic benefit transfer for the Food Stamp Program and possibly for other programs that deliver benefits to recipients, and providing rulemaking authority. The statute directs the Department to begin delivering food stamp benefits by an EBT system no later than July 1999 and to implement the system statewide no later than April 2000.

The Department's rules required under s. 49.129 (7), Stats., for administration of an electronic benefit transfer system will be limited at this time to rules for administration of an EBT system for the delivery of food stamp benefits. At a later date, the rules may be amended to provide for the delivery of other types of benefits.

The rules are to state how the electronic benefit transfer of food stamp benefits will work. In developing its rules, the Department will draw upon federal standards found in 7 CFR 274.12 for approval and operation of food stamp electronic benefit transfer systems, and will include in the rules provisions that s. 49.129 (7), Stats., directs the Department to include, namely, provisions relating to:

- 1) The liability of a recipient following loss or theft of the recipient's card;
- 2) A definition of fraudulent activity as the basis for suspension of a recipient, retailer or other participant from the program;
- 3) Confidentiality provisions; and
- 4) Measures to be taken to ensure the security of card issuance and electronic transfer of benefits.

The rules will also include definitions, such as primary cardholder and POS terminal, and may include provisions relating to such elements of the working of an EBT system as issuance of the recipient's card and assignment of the recipient's personal identification number, replacement of a lost or stolen card, dormant accounts, benefit replacement and conversion to coupons when a recipient moves out of an EBT area.

The rules will affect food stamp recipients, authorized food retailers, the Department and the EBT services vendor or vendors under contract to the Department.

The rules must be in effect before delivery of food stamp benefits by EBT can begin. The Department would like to begin operation of the new system in August 1998.

**Statutory authority for the rule:**

Section 49.129 (7), Stats.

**Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

Estimated hours of staff time – 80 hours.

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## *SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE*

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### **Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse**

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

#### **Administration**

##### *Rule Submittal Date*

Notice is hereby given that on July 22, 1997, the Department of Administration submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse.

##### *Analysis*

The rule relates to the use of state buildings and facilities. The Department proposes repealing and recreating ch. Adm 2 to update rule language and to incorporate legislative changes contained in 1995 Wis. Act 174, concerning the use, care and preservation of property under the Department's control.

##### *Agency Procedure for Promulgation*

A public hearing will be scheduled at a later date.

The organizational unit that is primarily responsible for promulgation of this rule is the Division of Buildings and Police Services.

##### *Contact Person*

If you have any questions, you may contact:

Donna Sorenson  
Telephone (608) 266–2887

#### **Corrections**

##### *Rule Submittal Date*

Notice is hereby given that, pursuant to s. 227.14 (4m), Stats., the Department of Corrections submitted proposed ch. DOC 310 to the Wisconsin Legislative Council Staff on July 30, 1997.

##### *Analysis*

The subject matter of the proposed rule affecting ch. DOC 310 relates to the inmate complaint review system.

##### *Agency Procedure for Promulgation*

Public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date. The organization unit that is primarily responsible for promulgation of the rule is the Division of Adult Institutions.

##### *Contact Person*

If you have questions, please contact:

Deborah Rychlowski  
Telephone (608) 266–8426

#### **Regulation & Licensing**

##### *Rule Submittal Date*

On July 18, 1997, the Department of Regulation and Licensing submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### *Analysis*

##### *Statutory authority:*

Sections 227.11 (2) and 452.07, Stats.

The proposed rule-making order relates to the employment of personal assistants by real estate salespeople and broker-employees.

##### *Agency Procedure for Promulgation*

A public hearing is required and is scheduled for August 28, 1997.

##### *Contact Person*

Pamela Haack  
Rules Center Coordinator  
Telephone (608) 266–0495

#### **Transportation**

##### *Rule Submittal Date*

On July 31, 1997, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Staff.

##### *Analysis*

The proposed rule affecting ch. Trans 201 relates to the erection of outdoor advertising signs where messages may be changed by electronic process.

##### *Agency Procedure for Promulgation*

A public hearing is required and is scheduled to be held on September 19, 1997. The organizational unit responsible for promulgation of the proposed rule is the Division of Transportation Infrastructure Development, Bureau of Highway Operations.

##### *Contact Person*

Julie A. Johnson  
Paralegal  
Telephone (608) 266–8810

#### **Transportation**

##### *Rule Submittal Date*

On July 31, 1997, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Staff.

##### *Analysis*

The proposed rule affecting ch. Trans 276 relates to allowing the operation of "double bottoms" (and certain other vehicles) on specified highways.

***Agency Procedure for Promulgation***

A public hearing is required and public hearings are scheduled to be held on September 3 and 10, 1997. The organizational unit responsible for promulgation of the proposed rule is the Division of Transportation Infrastructure Development/Bureau of Highway Operations.

***Contact Person***

Julie A. Johnson  
Paralegal  
Telephone (608) 266-8810

***Agency Procedure for Promulgation***

A public hearing is required and is scheduled to be held on August 26, 1997. The organizational unit responsible for promulgation of the proposed rule is the Division of State Patrol.

***Contact Person***

Julie A. Johnson  
Paralegal  
Telephone (608) 266-8810

***Transportation******Rule Submittal Date***

On July 24, 1997, the Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Staff.

***Analysis***

The proposed rule affecting ch. Trans 300 relates to the transportation of schoolchildren.

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## NOTICE SECTION

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### Notice of Hearings

#### Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), and 303.065, Stats., the Department of Corrections proposes ch. DOC 304, relating to inmate secure work programs.

#### Hearing Information

<u>Date &amp; Time</u>	<u>Location</u>
August 25, 1997 Monday 10:00 a.m. to 12:00 p.m. (noon)	Room 223 State Office Bldg. 141 Northwest Barstow St. WAUKESHA, WI
August 28, 1997 Thursday 1:00 p.m. to 3:00 p.m.	Rm. 105 State Office Bldg. 718 West Clairemont EAU CLAIRE, WI
August 29, 1997 Friday 2:00 p.m. to 3:00 p.m.	Secretary's Conference Rm. Dept. of Corrections 149 East Wilson St., 3rd Flr. MADISON, WI

*The public hearing sites are accessible to people with disabilities.*

#### Analysis Prepared by the Department of Corrections

Section 303.063 (1), Stats., authorizes the Department of Corrections to establish a secure work program for inmates in which the inmates are assigned to work away from the grounds of the institution while appropriately restrained for security purposes.

Section 303.063 (2), Stats., requires that the Department of Corrections must promulgate rules specifying the procedures and regulations relating to the secure work program under (1) before it may implement such a program.

The proposed rule:

1. Provides that an inmate shall have a security classification of medium, minimum, or minimum community residential confinement in order to be eligible to participate in the secure work program.
2. Provides that intensive sanctions inmates who are sanctioned back to prison and probationers and parolees who are being held in custody as an alternative to revocation may be eligible to participate in the secure work program.
3. Provides that inmates otherwise meeting the requirements of s. DOC 304.04 may be assigned to the secure work program as a disciplinary disposition under s. DOC 303.72 (9).
4. Provides that the warden of the correctional facility to which the inmate is assigned or the warden's designee shall review the proposed assignment of the inmate to a secure work program, and that an inmate shall be allowed to participate in a secure work program only after the warden or the warden's designee approves the inmate's assignment.
5. Provides that a secure work crew may consist of a maximum of 12 inmates.
6. Provides that an inmate may be on any one secure work program assignment for a maximum of 60 work days and that an inmate may be assigned to several secure work program assignments during the course of the inmate's incarceration.
7. Provides that inmates participating in a secure work program assignment shall be restrained by individual chain leg restraints and

may be required to wear electronic stun belts or utilize other security technology during the time they are outside the perimeter of the institution.

8. Provides that each work crew shall be supervised by at least 2 correctional officers, and that at least one of those officers shall be armed.

9. Provides that inmates in the secure work program may be assigned to work outside the secure perimeter of the correctional institution to which the inmate is assigned, and that work assignments may include roadside cleaning, snow removal, and construction projects.

10. Requires that inmates who are participating in secure work program assignments wear distinctively colored outerwear during the time they are outside the secure perimeter of the institution and that this outerwear shall be the outermost layer of clothing and that the outerwear shall be labeled "DOC inmate."

11. Provides that inmates who are assigned to secure work crews, who are not in disciplinary status, shall be paid compensated at an hourly rate unless serving a disciplinary sanction.

#### Text of Rule

**DOC 304.01 Purpose.** The purposes of the secure work program are:

- (1) To provide inmates work opportunities while the inmates are appropriately restrained for security purposes.
- (2) To provide inmates opportunities to assume responsibility in work settings to prepare them for employment upon release to the community.
- (3) To fulfill the goals of public protection and reintegration of the inmate into the community.
- (4) To provide service to the community.

**DOC 304.02 Applicability.** This chapter applies to the Wisconsin department of corrections and adult inmates in its custody. It interprets s. 303.063, Stats. This chapter is adopted pursuant to the authority of s. 303.063 (2), Stats.

**DOC 304.03 Organization of the secure work program.** (1) An inmate is eligible to participate in a secure work program if the inmate meets the requirements under s. DOC 304.04.

(2) The warden of the correctional facility to which an eligible inmate is assigned or the warden's designee shall review the proposed assignment of the inmate to a secure work program. An inmate may participate in a secure work program only after the warden or the warden's designee approves the inmate's assignment.

(3) A secure work crew may consist of a maximum of 12 inmates.

(4) An inmate may be assigned to any one secure work crew assignment for a maximum of 60 work days. An inmate may be placed on several secure work crew programs during the course of the inmate's incarceration.

(5) Inmates participating in a secure work program assignment shall be restrained by individual chain leg restraints and may be required to wear electronic stun belts or utilize other security technology during the time they are outside the secure perimeter of the institution.

(6) Each work crew shall be supervised by at least 2 correctional officers, and at least one of those correctional officers shall be armed.

**DOC 304.04 Eligibility for secure work program assignment.**

(1) An inmate is eligible to participate in the secure work program if any of the following apply:

- (a) The inmate has a security classification of medium security, medium outside security with supervision, minimum security or minimum security community residential confinement under s. DOC 302.12 (1) (c) to (f).

(b) The inmate is an intensive sanction inmate who has been sanctioned back to prison or is a probationer or parolee who is being held in custody as an alternative to revocation.

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

**DOC 304.05 Secure work program operation.** (1) An inmate participating in a secure work program assignment may be assigned to work outside the secure perimeter of the correctional institution to which the inmate is assigned.

(2) Work assignments may include roadside cleaning, snow removal, construction projects and community service projects.

(3) Inmates who are participating in secure work program assignments shall wear distinctively colored outerwear during the time they are outside the secure perimeter of the institution. Inmates shall be outfitted in distinctively colored garments to be worn as the outermost layer of clothing and the garments shall be labeled "DOC inmate."

**DOC 304.06 Inmate secure work crew pay.** Inmates assigned to secure work programs shall be compensated at an hourly rate unless serving a disciplinary sanction.

### **Initial Regulatory Flexibility Analysis**

These rules are not expected to have an effect on small businesses.

### **Fiscal Estimate**

This administrative rule relates to the development and organization of a secure work program for the Department in which inmates are assigned to work away from the grounds of the institution while appropriately restrained for security purposes.

The rule sets standards of eligibility for participation, duties of inmates who are assigned to the program, and security supervision requirements.

There will be some additional administrative workload for the institutions who have secure work crew programs. It is believed that these costs can be absorbed by the Department.

### **Contact Person**

Deborah Rychlowski, (608) 266–8426  
Office of Legal Counsel  
149 E. Wilson Street  
P.O. Box 7925  
Madison, WI 53707–7925

If you are hearing– or visually–impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non–English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non–English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

### **Written Comments**

Written comments on the proposed rules received at the above address no later than **September 5, 1997**, will be given the same consideration as testimony presented at the hearing.

## **Notice of Hearings**

### **Corrections**

Notice is hereby given that pursuant to ss. 227.11 (2) (a), and 303.065, Stats., the Department of Corrections proposes a revision to ch. DOC 309, relating to inmate mail property and phones.

## **Hearing Information**

<u>Date &amp; Time</u>	<u>Location</u>
<b>August 25, 1997</b> <b>Monday</b> <b>10:00 a.m. to</b> <b>12:00 p.m. (noon)</b>	<b>Room 223</b> <b>State Office Bldg.</b> <b>141 Northwest Barstow St.</b> <b>WAUKESHA, WI</b>
<b>August 26, 1997</b> <b>Tuesday</b> <b>2:00 p.m. to</b> <b>4:00 p.m.</b>	<b>Secretary's Conference Rm.</b> <b>Dept. of Corrections</b> <b>149 East Wilson St., 3rd Flr.</b> <b>MADISON, WI</b>
<b>August 28, 1997</b> <b>Thursday</b> <b>1:00 p.m. to</b> <b>3:00 p.m.</b>	<b>Rm. 105</b> <b>State Office Bldg.</b> <b>718 West Clairemont</b> <b>EAU CLAIRE, WI</b>

*The public hearing sites are accessible to people with disabilities.*

### **Analysis Prepared by the Dept. of Corrections**

Some provisions of the Department of Corrections administrative rules relating to inmate mail, property, visitation, and telephone calls have not been updated since the rule was created. With 14 years of experience working with the rule, the Department proposes to update the rule. This rule is authorized by ss. 301.02, 301.03 (1) and (2) and 227.11 (2), Stats. This rule interprets ss. 46.07, 301.32 (1) and 302.08, Stats.

This rule:

1. Makes technical changes.
2. Amends and creates new definitions.
3. Applies to all inmates in the Department's custody except for those inmates placed in county penal facilities or other states' or federal penal facilities.
4. Requires the Department to permit inmates to correspond with anyone, unless specifically disapproved by the warden.
5. Permits inmate mail sent to certain parties to be opened for inspection if the security director has reason to believe that the mail contains contraband.
6. Requires mail from certain parties to be clearly identifiable as being from one of the parties.
7. Creates a provision that incoming and outgoing mail may not be delivered if the security director has reasonable grounds to believe that the mail teaches or advocates illegal activity or disruption or behavior consistent with a gang or a violent ritualistic group.
8. Creates a provision that incoming and outgoing mail may not be delivered if it is determined to be injurious.
9. Creates a provision that incoming and outgoing mail may not be delivered if determined to interfere with individual penological interests, goals or needs.
10. Creates a provision that incoming mail may not be delivered if the warden determines it to be inappropriate for distribution throughout the institution.
11. Exempts inmate to inmate mail from the requirement that a record be kept of any mail that is read.
12. Permits, instead of requires, a conduct report to be written and disposed of according to disciplinary rules if an inmate is alleged to have violated rules or institution policies and procedures related to mail.
13. Provides that all inmate personal property shall be stored as specified by each institution.
14. Provides that personal property and funds of an inmate who has escaped shall be held for 30 days, instead of one year under the current rule. Unclaimed property shall be considered abandoned.

### **Text of Rule**

**SECTION 1.** DOC 309.01 is amended to read:

**DOC 309.01 Applicability.** This chapter applies to the department of corrections, and to all adult inmates in the legal custody of the department, except for inmates placed by the department in county penal facilities used by the department or other states or federal penal facilities. It is promulgated pursuant to authority conferred by ss. 227.11 (2), 301.02, and 301.03, Stats., and interprets ss. 46.07, 301.19 (1), 301.32, 302.07, 302.08, 302.12, 303.01, and 303.065, Stats.

**SECTION 2.** DOC 309.02 (2) is renumbered s. DOC 309.02 (4) and amended to read:

DOC 309.02 (4) “Close family member” under ss. DOC ~~309.45 309.27~~ to ~~309.52 309.37~~ means the inmate’s natural, adoptive, step, and foster parents; spouse, children, grandparents, grandchildren, or siblings. A parent surrogate is within the definition of parent if ~~investigation substantiates~~ it can be substantiated that a claimed surrogate did in fact act as a parent to the inmate, although the parent surrogate was not an adoptive, foster, or stepparent.

**SECTION 3.** DOC 309.02 (2m) is renumbered s. DOC 309.02 (5).

**SECTION 4.** DOC 309.02 (3) is renumbered s. DOC 309.02 (6).

**SECTION 5.** DOC 309.02 (4) is renumbered s. DOC 309.02 (2) and amended to read:

DOC 309.02 (2) “~~Administrator of the division of adult institutions~~” or “~~division administrator~~” means the administrator of the division of adult institutions of the department of corrections, or designee.

**SECTION 6.** DOC 309.02 (5) is renumbered s. DOC 309.02 (7).

**SECTION 7.** DOC 309.02 (6) is renumbered s. DOC 309.02 (3).

**SECTION 8.** DOC 309.02 (7) is renumbered s. DOC 309.02 (8) and amended to read:

DOC 309.02 (8) “General or trust account” means an account established ~~to receive an inmate’s pay, pensions, disability payments, of gifts from family; and from which disbursements may be made while an inmate is in the legal custody of the department~~ by an institution to receive all funds for the benefit of an inmate.

**SECTION 9.** DOC 309.02 (8) is renumbered s. DOC 309.02 (10).

**SECTION 10.** DOC 309.02 (8m) is renumbered s. DOC 309.02 (13).

**SECTION 11.** DOC 309.02 (9) is renumbered s. DOC 309.02 (15).

**SECTION 12.** DOC 309.02 (9) is created to read:

DOC 309.02 (9) “Harmful materials” means material, whether written, picture, photograph, drawing, sculpture, motion picture, film or similar visual representation or image which depicts any of the following:

(a) A person or portion of the adult or child human body that depicts sexual behavior, sadomasochistic abuse, physical torture or brutality;

(b) Nudity of any person who is not an adult;

(c) Nudity, which is not part of any published or printed material, such as a personal nude photograph.

**SECTION 13.** DOC 309.02 (9m) is renumbered s. DOC 309.02 (18) and amended to read:

DOC 309.02 (18) “Release account” means an account established for an inmate in which a percentage of the inmate’s income is deposited, in accordance with s. DOC ~~309.466 309.30~~ so that the inmate has sufficient funds when released from the institution to purchase release clothing, out-of-state transportation, and other items and services needed on release.

**SECTION 14.** DOC 309.02 (10) is renumbered s. DOC 309.02 (19).

**SECTION 15.** DOC 309.02 (11) is renumbered s. DOC 309.02 (21).

**SECTION 16.** DOC 309.02 (12) is renumbered s. DOC 309.02 (22).

**SECTION 17.** DOC 309.02 (12) is created to read:

DOC 309.02 (12) “Mail” includes materials such as letters and other items of correspondence processed through the United States postal service and letters and other items of correspondence processed within an institution.

**SECTION 18.** DOC 309.02 (13) is renumbered s. DOC 309.02 (25) and amended to read:

DOC 309.02 (25) “~~Superintendent~~ Warden” means the ~~superintendent warden~~ at an institution, or designee.

**SECTION 19.** DOC 309.02 (14) is created to read:

DOC 309.02 (14) “Nudity” means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion below the top of the areola or nipple, or the depiction of covered male genitals in a discernibly turgid state.

**SECTION 19.** DOC 309.02 (16) is created to read:

DOC 309.02 (16) “Pornography” means any material that: Appeals to the prurient interest in sex or depicts or describes human sexual behavior.

**SECTION 21.** DOC 309.02 (20) is created to read:

DOC 309.02 (20) “Secretary” means the secretary of the department of corrections, or designee.

**SECTION 22.** DOC 309.02 (23) is created to read:

DOC 309.02 (23) “Sexual behavior” means the actual or simulated act of any of the following:

(a) Sexual intercourse, which means any penetration, however slight, by the penis into the mouth, vagina, or anus of another person, or any penetration by any part of the body or an object into the anus or vagina of another person.

(b) Fellatio or cunnilingus.

(c) Sodomy.

(d) Bestiality.

(e) Masturbation.

(f) Necrophilia.

(g) Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture, or bondage.

(h) Sexual excitement.

**SECTION 23.** DOC 309.02 (24) is created to read:

DOC 309.02 (24) “Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

**SECTION 24.** DOC 309.03 (2) (intro.) is amended to read:

DOC 309.03 (2) News media representatives ~~shall~~ may be permitted to interview individual inmates, unless one of the following exist:

**SECTION 25.** DOC 309.03 (2) (a) (intro.) is amended to read:

DOC 309.03 (2) (a) The ~~superintendent warden~~ believes that an interview will jeopardize or be detrimental to any of the following:

**SECTION 26.** DOC 09.03 (2) (a) 1. is amended to read:

DOC 309.03 (2) (a) 1. ~~Jeopardize the~~ The safety or order of the institution; ~~or~~

**SECTION 27.** DOC 309.03 (2) (a) 2. is amended to read:

DOC 309.03 (2) (a) 2. ~~Be detrimental to the~~ The welfare of the inmate; ~~or~~

**SECTION 28.** DOC 309.03 (2) (a) 3. is created to read:

DOC 309.03 (2) (a) 3. The welfare of the victim, the victim’s family or the community.

**SECTION 29.** DOC 309.03 (2) (a) 4. is created to read:

DOC 309.03 (2) (a) 4. Legitimate correctional objectives, including resources.

**SECTION 30.** DOC 309.03 (2) (b) is amended to read:

DOC 309.03 (2) (b) The clinical services unit supervisor believes that the inmate is mentally ill; ~~or~~

**SECTION 31.** DOC 309.03 (2) (c) is amended to read:



DOC 309.03 (2) (c) The inmate is confined in segregation. The administrator of the division of adult institutions may approve in writing an interview of an inmate confined in segregation in extraordinary circumstances; or,

**SECTION 32.** DOC 309.03 (2) (d) is amended to read:

DOC 309.03 (2) (d) The inmate refuses to be interviewed. A superintendent may require the refusal to be in writing.

**SECTION 34.** DOC 309.03 (5) is amended to read:

DOC 309.03 (5) All visits and interviews conducted pursuant to this section shall be subject to regulation by the superintendent warden as to time, location, length, and equipment used. Such regulation is not to discourage visits and interview.

**SECTION 35.** DOC 309.04 (4) (c) 8. is created to read:

DOC 309.04 (4) (c) 8. Is “injurious”, meaning material that is:

- a. Pornographic.
- b. Harmful.
- c. Poses a threat to the security, orderly operation, discipline or safety of the institution.
- d. Is inconsistent with or poses a threat to the safety, treatment or rehabilitative goals of an inmate.
- e. Facilitates criminal activity.

**SECTION 35.** DOC 309.05 (1) is renumbered s. DOC 309.04 (1) and amended to read:

DOC 309.04 (1) The Department of corrections encourages communication between inmates may communicate with and their families, friends, government officials, courts, and other people concerned with the welfare of inmates consistent with the need to protect the public. Such communication fosters reintegration into the community and the maintenance of family ties. It helps to motivate inmates contributes to high morals and to the security of inmates and staff.

**SECTION 36.** DOC 309.05 (2) (a) is renumbered s. DOC 309.04 (2) (a).

**SECTION 37.** DOC 309.05 (2) (b) is renumbered s. DOC 309.04 (2) (b).

**SECTION 38.** DOC 309.05 (2) (c) is renumbered s. DOC 309.04 (2) (c) and amended to read:

DOC 309.04 (2) (c) An inmate shall be permitted to correspond with anyone, including inmates in other institutions. There shall be no limit on the length or number of letters received or sent by any inmate.

**SECTION 39.** DOC 309.05 (2) (d) is renumbered s. DOC 309.04 (2) (d).

**SECTION 39m.** DOC 309.05 (3) is repealed.

**SECTION 40.** DOC 309.05 (4) is renumbered s. DOC 309.04 (3) and amended to read:

DOC 309.04 (3) Mail sent by an inmate to any of the parties listed in pars. (a) to (j) may not be opened for inspection or read by institution staff, unless the security director has reason to believe that the mail contains contraband. Mail received by an inmate from any of these parties may be opened by institution staff in the presence of the inmate. Staff may inspect the document but only to the extent necessary to determine if the mail contains contraband, or if the purpose is misrepresented. The mail may be read if there is reason to believe it is other than a legal document. Contraband shall be processed in accordance with sub. (6) (e) (intro.) and 1., (f) and (g). This subsection applies to mail clearly identifiable as being from one or more of the following parties:

- (a) An attorney.
- (b) The governor of Wisconsin.
- (c) Members of the Wisconsin legislature.
- (d) Members of the United States congress.
- (e) The secretary.
- (f) The administrator.

(g) The attorney general or an assistant attorney general of Wisconsin.

(h) An investigative agency of the federal government.

(i) The clerk or judge of any state or federal court.

(j) The President of the United States.

**SECTION 41.** DOC 309.05 (5) is repealed.

**SECTION 42.** DOC 309.05 (6) (intro.) is renumbered s. DOC 309.04 (4) (intro.) and is amended to read:

DOC 309.04 (4) Except as provided in subs. sub. (3), (4) and (5), the following restrictions apply to all inmate correspondence:

**SECTION 43.** DOC 309.05 (6) (a) is renumbered s. DOC 309.04 (4) (a).

**SECTION 44.** DOC 309.05 (6) (b) is renumbered s. DOC 309.04 (4) (b) and amended to read:

DOC 309.04 (4) (b) Incoming and outgoing mail, other than mail specified in (3), is subject to reading by correctional staff. ~~may be read only if the security director has reasonable grounds to believe that mail should not be delivered pursuant to par. (c) or if the correspondence is between inmates.~~ If the correspondence is between inmates and concerns joint legal matters, it shall not be read further and shall be submitted for ~~transmittal without delay~~ delivery.

**SECTION 45.** DOC 309.05 (6) (c) (intro.) is renumbered s. DOC 309.04 (4) (c) (intro.) and amended to read:

DOC 309.05 (4) (c) Incoming and outgoing mail shall not be delivered if it does any of the following:

**SECTION 46.** DOC 309.05 (6) (c) 1. is renumbered s. DOC 309.04 (4) (c) 1. and amended to read:

DOC 309.05 (4) (c) 1. Threatens criminal activity or physical harm to any person;.

**SECTION 47.** DOC 309.05 (6) (c) 2. is renumbered s. DOC 309.04 (4) (c) 2. and amended to read:

DOC 309.04 (4) (c) 2. Threatens blackmail or extortion;.

**SECTION 48.** DOC 309.05 (6) (c) 3. is renumbered s. DOC 309.04 (4) (c) 3. and amended to read:

DOC 309.04 (4) (c) 3. Concerns sending contraband in or out of an institution;.

**SECTION 49.** DOC 309.05 (6) (c) 4. is renumbered s. DOC 309.04 (4) (c) 4. and amended to read:

DOC 309.04 (4) (c) 4. Concerns plans to escape;.

**SECTION 50.** DOC 309.05 (6) (c) 5. is renumbered s. DOC 309.04 (4) (c) 5. and amended to read:

DOC 309.04 (4) (c) 5. Concerns activity that, if completed, would violate the laws of Wisconsin or the United States or the administrative rules of the department of corrections;.

**SECTION 51.** DOC 309.05 (6) (c) 6. is renumbered s. DOC 309.04 (4) (c) 6. and amended to read:

DOC 309.04 (4) (c) 6. Is in code;.

**SECTION 52.** DOC 309.05 (6) (c) 7. is renumbered s. DOC 309.04 (4) (c) 7. and amended to read:

DOC 309.04 (4) (c) 7. Solicits gifts from a person other than a family member or a person on the visiting list;.

**SECTION 53.** DOC 309.05 (6) (c) 8. is repealed.

**SECTION 55.** DOC 309.05 (6) (c) 9. is renumbered s. DOC 309.04 (4) (c) 9.

**SECTION 56.** DOC 309.04 (4) (c) 10. is created to read:

DOC 309.04 (4) (c) 10. Teaches or advocates illegal activity, disruption, or behavior consistent with a gang or a violent ritualistic group.

**SECTION 57.** DOC 309.04 (4) (c) 11. is created to read:

DOC 309.04 (4) (c) 11. Is determined by the warden, on a case by case basis, to interfere with an inmate’s penological interests, goals, or needs.

**SECTION 58.** DOC 309.04 (4) (c) 12. is created to read:

DOC 309.04 (4) (c) 12. Is determined by the warden, for reasons other than those listed in this paragraph, to be inappropriate for distribution throughout the institution.

**SECTION 59.** DOC 309.05 (6) (d) is renumbered s. DOC 309.04 (4) (d) and amended to read:

DOC 309.04 (4) (d) A record of any mail that is read, except inmate to inmate mail, shall be kept by the security director. It shall include the name of the sender and receiver, the date, the reason for reading it, and the name of the reader. Inmate questions regarding mail inspection shall be addressed to the security director.

**SECTION 60.** DOC 309.05 (6) (e) is renumbered s. DOC 309.04 (4) (e).

**SECTION 61.** DOC 309.05 (6) (e) 1. is renumbered s. DOC 309.04 (4) (e) 1.

**SECTION 62.** DOC 309.05 (6) (e) 2. is renumbered s. DOC 309.04 (4) (e) 2. and amended to read:

DOC 309.04 (4) (e) 2. If the letter is outgoing mail ~~or if it is incoming and the sender is an inmate~~, the sender ~~and the person to whom the letter was sent~~ shall receive a notice stating why the letter was not delivered ~~and the identity of the sender and intended receiver~~. The letter shall be kept by ~~correctional staff~~ disposed of consistent with s. DOC 303.10.

**SECTION 63.** DOC 309.05 (6) (f) is renumbered s. DOC 309.04 (4) (f) and amended to read:

DOC 309.04 (4) (f) ~~The security director's decision to refuse to deliver a letter~~ Decisions regarding non-delivery of mail may be appealed to the superintendent warden, who shall decide the appeal in accordance with these sections this subsection.

**SECTION 64.** DOC 309.05 (6) (g) is renumbered s. DOC 309.04 (4) (g).

**SECTION 65.** DOC 309.05 (6) (h) is renumbered s. DOC 309.04 (4) (h).

**SECTION 66.** DOC 309.05 (7) is renumbered s. DOC 309.04 (5).

**SECTION 67.** DOC 309.05 (8) is renumbered s. DOC 309.04 (6) and amended to read:

DOC 309.04 (6) Contraband found through inspections conducted pursuant to this section shall be disposed of in accordance with the departmental rules s. DOC 303.10.

**SECTION 68.** DOC 309.05 (9) is renumbered s. DOC 309.04 (7).

**SECTION 69.** DOC 309.05 (10) (intro.) is renumbered s. DOC 309.04 (8) (intro.) and amended to read:

DOC 309.04 (8) If an inmate is alleged to have violated these rules or institution policies and procedures relating to mail, a conduct report shall may be written and disposed of in accordance with the rules providing for disciplinary procedures for major offenses. For such violation, the penalty may include suspension of mail privileges with a specific person for a specific period, subject to the following:

**SECTION 70.** DOC 309.05 (10) (a) is renumbered s. DOC 309.04 (8) (a) and amended to read:

DOC 309.04 (8) (a) A suspension of 6 months or less may be imposed ~~by the adjustment committee and appealed to the superintendent and warden~~ within 10 days of the imposition.

**SECTION 71.** DOC 309.05 (10) (b) is renumbered s. DOC 309.04 (8) (b) and amended to read:

DOC 309.04 (8) (b) A suspension of more than 6 months may be appealed to the superintendent warden within 10 days of its imposition and thereafter to the administrator and the secretary.

**SECTION 72.** DOC 309.05 (11) is renumbered s. DOC 309.04 (9).

**SECTION 73.** DOC 309.05 (12) is repealed.

**SECTION 74.** DOC 309.06 (1) is renumbered s. DOC 309.05 (1) and amended to read:

DOC 309.05 (1) The department shall ~~encourage and facilitate inmate reading of publications, including books, magazines, newspapers, and pamphlets.~~ Reading generally fosters correctional objectives by educating inmates and by keeping them informed of events and issues in the community.

**SECTION 75.** DOC 309.06 (2) is renumbered s. DOC 309.05 (2) and amended to read:

DOC 309.05 (2) Section ~~DOC 309.05~~ 309.04 applies to receipt of publications. In addition, the receipt of publications by inmates is subject to the following restrictions:

(a) Publications ~~must~~ may only be received directly from the publisher or other recognized commercial sources in their packages;

(b) Inmates ~~shall~~ may not receive publications that:

1. Teach or advocate violence or hatred and present a ~~clear and present~~ danger to institutional security and order;

2. Teach or advocate behavior that violates the law of the state or the United States or the rules of the department ~~of corrections~~;

3. Teach or describe the manufacture or use of weapons, explosives, drugs, or intoxicating substances;

4. Are ~~obscene~~ injurious as defined in s. DOC ~~309.06 (5)~~ 309.04 (4) (c) 8.;

5. Teach or describe the manufacture or use of devices that create a substantial danger of physical harm to self or others;

(c) A publication ~~shall~~ may not be prohibited on the basis of its appeal to a particular ethnic, racial, or religious audience or because of the political beliefs expressed therein.

**SECTION 76.** DOC 309.06 (3) is repealed and recreated to read:

DOC 309.05 (3) If a publication is not delivered pursuant to sub. (2), the inmate and the sender shall be notified. The inmate may appeal the decision to the warden within 10 days of the decision.

**SECTION 77.** DOC 309.06 (4) is repealed.

**SECTION 78.** DOC 309.35 is renumbered s. DOC 309.20 and s. DOC 309.20 (1), (3), (3) (b) (intro.), (3) (b) 1., (3) (b) 2., (3) (c), (3) (f), (4) (intro.), (4) (a) 4., (4) (b) 1., (4) (c) (intro.), (4) (d) 1., (4) (d) 4., (6) (b) and (7), as renumbered, are amended to read:

DOC 309.20 (1) POLICY. Inmates are permitted to have personal property in their possession in an institution subject to this section and the policies and procedures established under this section by the administrator ~~of the division of adult institutions~~ or by the warden ~~or superintendent of an institution~~, relating to the acquisition, possession, use and disposal of inmate property.

DOC 309.20 (3) ACQUISITION, POSSESSION AND USE. Each warden ~~or superintendent~~ shall develop policies and procedures subject to the approval of the administrator ~~of the division of adult institutions~~, relating to the acquisition, possession and use of the personal property of inmates within the institution, and including the following components:

DOC 309.20 (3) (b) Permissible methods by which personal property may be acquired by an inmate, including either of the following:

DOC 309.20 (3) (b) 1. Purchase from institution canteen;

DOC 309.20 (3) (b) 2. Purchase from approved retail outlets;

DOC 309.20 (3) (c) All inmate personal property, ~~excluding electronic equipment, typewriters, fans or other large items~~, shall be stored in receptacles provided as specified by the each institution. The volume of an inmate's possession may not exceed the maximums provided under this section.

DOC 309.20 (3) (f) An inmate shall be allowed legal materials which are necessary for that inmate's legal actions or the actions of another inmate whom the first inmate is assisting. All of an inmate's legal materials which are kept in the inmate's cell or room shall fit in a receptacle which is no larger than 20" x 20" x 20" or 8000 cubic inches. A warden ~~or superintendent~~ may authorize additional storage space on a temporary basis upon demonstrated need in connection with on-going litigation and consistent with fire codes and regulations.

DOC 309.20 (4) DISPOSAL. Each warden ~~or superintendent~~ shall develop policies and procedures subject to the approval of the administrator ~~of the division of adult institutions~~, relating to the disposal of personal property of inmates within the institution. Inmates shall have the option of choosing the method of disposal subject to security concerns. The following components shall be included:

DOC 309.20 (4) (a) 4. Upon release to parole or mandatory release, funds in an inmate's account shall be disbursed as specified in s. DOC ~~309.45~~ 309.27 (5).

DOC 309.20 (4) (b) 1. Personal property and funds of an inmate who has escaped shall be held in the institution for a period of ~~one year~~ 30 days after which time the property shall be ~~disposed of in accordance with s. DOC 303.10 (3) considered abandoned. The abandoned inmate personal property shall be disposed of in accordance with the policies and procedures of the institution.~~ The institution shall not be responsible for damage due to prolonged storage. No property shall be released to family members solely at the request of the inmate's family members.

DOC 309.20 (4) (c) Upon the death of an inmate, and satisfactory verification of next of kin, the warden ~~or superintendent~~ shall:

DOC 309.20 (4) (d) 1. Items received at an institution but not approved shall upon inmate notification be returned to the sender, forwarded by commercial carrier to a person on the inmate's visiting list at the inmate's expense, or picked up by a person on the inmate's approved visiting list within 30 days. Items which are not approved and pose a security concern to the institution shall be disposed of immediately. Property which cannot be disposed of as provided in this paragraph shall be disposed of at the discretion of the warden ~~or superintendent~~.

DOC 309.20 (4) (d) 4. Inmates are permitted to sell to other inmates only property items which are specified in policies and procedures established by each warden ~~or superintendent~~ and approved subject to approval by the administrator of the division of adult institutions.

DOC 309.20 (6) (b) For the purposes of transportation, an inmate's legal materials shall fit in a receptacle which is no larger than 20" x 20" x 20" or 8000 cubic inches. Materials in excess of this amount shall be shipped at the inmate's expense by commercial carrier. ~~A The warden or superintendent shall may~~ authorize payment of shipping costs for excess materials if the inmate can establish indigence in accordance with s. DOC ~~309.51~~ 309.36.

DOC 309.20 (7) CONTRABAND. Items not permitted at an institution or permitted but not on an inmate's property list under sub. (2) shall be considered contraband and subject to seizure and disposition under s. DOC 303.10. An inmate may be subject to discipline for possessing contraband under ss. DOC ~~303.42~~ 303.43 through ~~303.47~~ 303.48.

**SECTION 79.** DOC 309.56 is renumbered s. DOC 309.39.

**SECTION 80.** DOC 309.57 is renumbered s. DOC 309.40 and s. DOC 309.40 (4) (a) to (d), as renumbered, are amended to read:

DOC 309.40 (4) (a) To allow an inmate to return a call from an attorney;

(b) When there is a statutory time limit that would be missed and the inmate needs to convey information to the attorney;

(c) When it appears to staff that a call to an attorney is in the best interest of the inmate;

(d) When an inmate is unable to write;

**SECTION 81.** DOC 309.58 is renumbered s. DOC 309.41.

**SECTION 82.** DOC 309.59 is renumbered s. DOC 309.42 and s. DOC 309.42 (1), as renumbered, is amended to read:

DOC 309.42 (1) An inmate shall be permitted to make telephone calls to ~~his or her~~ the inmate's spouse, parent, or child committed to another Wisconsin correctional or mental health institution. ~~Such calls~~ Calls under this section shall be permitted only after prior arrangements through appropriate staff have been made. Calls under this section shall be paid for from the account of the inmate originally requesting the call.

**SECTION 83.** DOC 309.60 is renumbered s. DOC 309.43 and s. DOC 309.43 (2), as renumbered, is amended to read:

The ~~superintendent~~ warden may make exceptions to any limits on inmate calls consistent with the policy of this chapter.

**SECTION 84.** APPENDIX DOC 309.03 (Note) is amended as follows:

Delete sentence #3 paragraph #1.

Amend sentence #4 paragraph #3 to read:

See DOC ~~309.05~~ 309.04.

Amend sentence #1 paragraph #5 to read:

... ~~superintendent~~ warden

Delete paragraph #11.

**SECTION 85.** APPENDIX DOC 309.05 (Note) is renumbered s. DOC 309.04 and amended as follows:

Amend sentence #1 paragraph #1 to read:

DOC ~~309.05~~ 309.04 . . .

Delete and recreate sentences #2 to #7 paragraph #3 to read:

Subsections (3) to (5) reflect a concern for security, order and safety of staff, inmates and visitors in preventing contraband from entering an institution. Incoming mail received by an inmate in connection with a complaint filed by the inmate or from an individual listed in sub. (4) may be opened in the presence of the inmate and inspected for contraband. Incoming mail received by an inmate from an individual listed in sub. (4) may be read only to the extent necessary to determine whether it contains contraband or it is what it is represented to be. Outgoing mail sent by an inmate to the complaint examiner may not be opened or read.

Outgoing mail to an individual listed in sub. (4) may not be inspected or read unless the security director has reason to believe that the mail contains contraband.

Amend sentence #1 paragraph #4 to read:

... under sub. (4) and mail from courts under sub. (5). . .

Amend sentence #5 paragraph #4 to read:

... sub. ~~(6)~~ (5) (e) (intro.) and 1, (f) and (g).

Delete paragraph #5.

Amend sentence #3 paragraph #6 to read:

... DOC ~~303.48~~ 303.32.

Delete sentence #4 paragraph #6.

Delete sentence #6 paragraph #8.

Delete paragraph #9.

Delete sentences #5 to #7 paragraph #11.

Amend paragraph #13 to read:

Subsection (5) (e) provides for a record of mail, except inmate to inmate, not delivered either because it contains contraband or because it violates sub. (5) (c) . . . Subsection (5) (f) permits appeal to the ~~superintendent~~ warden. . . Subsection (5) (g) . . .

Amend paragraph #15 to read:

Subsection ~~(6)~~ (4) . . . Subsection ~~(6)~~ (4)...

Amend paragraph #16 to read:

Subsection ~~(8)~~ (6) ~~(10)~~ (8). . .

**SECTION 86.** APPENDIX DOC 309.06 (Note) is renumbered s. DOC 309.05 and amended as follows:

Amend sentence #1 paragraph #1 to read:

DOC ~~309.06~~ 309.05 . . .

Amend sentence #2 paragraph #1 to read:

DOC ~~309.05~~ 309.04 . . .

Amend sentence #4 paragraph #2 to read:

DOC ~~309.05~~ 309.04.

Amend sentence #3 paragraph #5 to read:

... DOC ~~309.05~~ 309.04...

**SECTION 87.** APPENDIX DOC 309.35 (Note) is renumbered s. DOC 309.20 and amended as follows:

Amend paragraph #1 to read:

DOC ~~309.35~~ 309.20 . . .

Amend paragraph #5 to read:

Subsection (3) identifies some of the methods by which property may come into the institution. Institutions are free to use other methods. Paragraphs (d) to (f) prescribe the size of the receptacles for which all inmate property must be stored. Paragraph (g) allocates

responsibility for lost or damaged property and determines the replacement value of property. Subsection (5) states the value of property which is permitted at an institution. Subsection (4) (a) . .

Amend sentence #1 paragraph #6 to read:

Subsection (4) (b) (4) . .

Amend sentence #2 paragraph #6 to read:

Subsection (4) (e) (3) . .

Amend paragraph #7 to read:

Subsection (4) (d) gives institutions authority subject to the approval of the division administrator to regulate the specifications and number of items. Such policies, e.g., as to size of television, are already in effect and will be continued disposal of inmates' personal property.

Amend paragraph #8 to read:

Subsection (5) (7) . .

**SECTION 88.** APPENDIX DOC 309.56 (Note) is renumbered s. DOC 309.39.

**SECTION 89.** APPENDIX DOC 309.57 (Note) is renumbered s. DOC 309.40 and is amended as follows:

Amend sentence #3 paragraph #1 to read:

DOC ~~309.25~~ 309.15 . .

Amend sentence #4 paragraph #1 to read:

. . .DOC ~~309.25 & 309.29~~ 309.15 & 309.19.

**SECTION 90.** APPENDIX DOC 309.58 (Note) is renumbered s. DOC 309.41.

**SECTION 91.** APPENDIX DOC 309.59 (Note) is renumbered s. DOC 309.42.

**SECTION 92.** APPENDIX DOC 309.60 (Note) is renumbered s. DOC 309.43 and is amended as follows:

Amend sentence #3 paragraph #1 to read:

. . ~~superintendent-warden~~ . .

Amend sentence #1 paragraph #2 to read:

. . ~~superintendent warden~~

Amend sentence #2 paragraph #2 to read:

. . .DOC ~~309.56 (1)~~ 309.39 (1) . . ~~superintendent warden~~

### **Initial Regulatory Flexibility Analysis**

These rules are not expected to have an effect on small businesses.

### **Fiscal Estimate**

This administrative rule relates to several sections of the rules which relate to inmate mail, property, and telephone calls. These rules have not been updated for over fourteen years.

Many of the changes are technical in nature. Additional definitions are included, including terms such as "harmful materials". Some provisions change the way various types of mail are handled and processed.

It is not believed that these changes in the rule will result in a fiscal impact on the Department.

### **Contact Person**

Deborah Rychlowski, (608) 266–8426  
Office of Legal Counsel  
149 E. Wilson Street  
P.O. Box 7925  
Madison, WI 53707–7925

If you are hearing– or visually–impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non–English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non–English or sign language interpreter should make that request

at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

### **Written Comments**

Written comments on the proposed rules received at the above address no later than **September 5, 1997**, will be given the same consideration as testimony presented at the hearing.

## **Notice of Hearings**

### **Corrections**

Notice is hereby given that pursuant to ss. 227.11 (2) (a), and 303.065, Stats., the Department of Corrections proposes a revision to ch. DOC 309, relating to inmate accounts and pay.

### **Hearing Information**

<u>Date &amp; Time</u>	<u>Location</u>
<b>August 25, 1997</b> <b>Monday</b> <b>10:00 a.m. to</b> <b>12:00 p.m. (noon)</b>	<b>Room 223</b> <b>State Office Bldg.</b> <b>141 Northwest Barstow St.</b> <b>WAUKESHA, WI</b>
<b>August 26, 1997</b> <b>Tuesday</b> <b>2:00 p.m. to</b> <b>4:00 p.m.</b>	<b>Secretary's Conference Rm.</b> <b>Dept. of Corrections</b> <b>149 East Wilson St., 3rd Flr.</b> <b>MADISON, WI</b>
<b>August 28, 1997</b> <b>Thursday</b> <b>1:00 p.m. to</b> <b>3:00 p.m.</b>	<b>Rm. 105</b> <b>State Office Bldg.</b> <b>718 West Clairemont</b> <b>EAU CLAIRE, WI</b>

*The public hearing sites are accessible to people with disabilities.*

### **Analysis Prepared by the Department of Corrections**

Some provisions of the Department of Corrections administrative rules relating to inmate accounts and compensation have not been updated since the rules were promulgated. With over 14 years of experience working with the rules, the Department proposes to update the rule.

This rule:

1. Makes technical changes.
2. Adds the DNA surcharge to the deductions to be collected from an inmate's income by the institution business office.
3. Provides that the priority of payment of deductions shall be determined by the Department.
4. Allows the administrator to determine the maximum amount to be accumulated in the inmate release account. The current maximum amount is \$500.
5. Permits transfer of any excess amount of release account funds to be transferred to the inmate's regular account.
6. Permits an inmate to request disbursement from the inmate's general account for reasons consistent with the stated purposes.
7. Permits an inmate to request disbursements to close family members once every calendar month instead of the current once every 30 days.
8. Repeals the provision permitting disbursements to inmates for the purchase of United States savings bonds.
9. Prohibits inmates from purchasing items or services on credit or installment plans or entering into any agreement incurring future financial obligations or receiving any property with a balance owing.
10. Requires the inmate to provide the funding for out–of–state release transportation.

11. Limits the loan an inmate may receive for legal materials to \$200 in a calendar year instead of the current \$200 annually. This limit is regardless of transfer or placement.

12. Provides that any debt incurred because of a legal loan will be maintained as part of the inmate's account balance in all subsequent

correctional placements and the debt will be subject to the same repayment procedures.

13. Due to the size and complexity of the changes being made to ch. DOC 309, ch. DOC 309 is being promulgated in sections. The sections include:

- 1) Visitation;
- 2) Mail, property and phones;
- 3) Religion and leisure groups;
- 4) Inmate access to legal materials; and
- 5) Inmate accounts and pay; and
- 6) Inmate access to legal materials.

Some of the sections are moving forward more quickly than others. Due to the renumbering of the entire section, there may be a period of time where there may be duplicate numbering or where the cross–references to ch. DOC 309 may not be accurate. However, when the promulgation of these six sections is completed, the numbering should be correct. It is anticipated that at most there will be a gap of four months between the time the first and last sections of ch. DOC 309 are promulgated.

### Text of Rule

**SECTION 1.** DOC 309.02 (11) is created to read:

DOC 309.02 (11) “Legal loan” means money loaned to indigent inmates for legal correspondence and copying.

**SECTION 2.** DOC 309.02 (17) is created to read:

DOC 309.02 (17) “Program assignment” means a pay status for inmates involved in educational programs and treatment programs.

**SECTION 3.** DOC 309.02 (26) is created to read:

DOC 309.02 (26) “Work assignment” means a placement in an approved job completing tasks to fulfill the needs of the institution.

**SECTION 4.** DOC 309.30 (5) is created to read:

DOC 309.30 (5) When the release account funds exceed the established amount under sub. (1), the excess funds may be transferred to the inmate’s regular account and may be disbursed according to s. DOC 309.33.

**SECTION 5.** DOC 309.33 is created to read:

**DOC 309.33 Disbursement of general account funds.** (1) Available general account funds shall be disbursed by the business manager for canteen or other purposes approved by the warden or designee and shall be consistent with the purposes under s. DOC 309.27. Priority of payment order shall be determined by the department. The warden or business manager may disburse funds from the inmate’s general account to pay creditors’ claims acknowledged in writing by the inmate and claims reduced to judgment.

(2) Inmates may request to have general account funds disbursed for reasons consistent with s. DOC 309.27. The procedure for processing inmate requests is required to be written under s. DOC 309.32.

(3) Requests for disbursement in excess of \$25 to more than one close family member and to other persons may be made only with written permission of the warden or designee in accordance with s. DOC 309.27 (3).

(4) The objectives of s. DOC 309.27 may be fulfilled by disbursements of general account funds to any source, with written permission from the warden or designee, excluding the following, which do not require the warden’s approval:

(a) Twenty–five dollars or less to the inmate’s one close family member once every calendar month.

(b) To deposit in an interest bearing account established in the inmate’s name at a bank designated by the department. All interest shall accrue to the inmate.

(c) To pay costs of temporary release under ch. DOC 325 and leave for qualified inmates under ch. DOC 326.

(5) Before releasing an inmate to field supervision, the releasing institution shall inform the parole agent of the balances in the inmate’s

general account, release account under s. DOC 309.30 and segregated account, if any, under s. DOC 309.35. The agent shall instruct the institution business manager as to where these balances shall be transferred. Following release, inmates’ funds may only be dispersed with the approval of the agent. Any remaining funds from these accounts shall be paid to the offender.

(6) Inmates may not open charge accounts or possess charge cards, purchase items or services on credit or installment plan, receive any property with a balance owing, or enter into any agreement incurring future financial obligation.

**SECTION 6.** DOC 309.36 (2) (c) is created to read:

DOC 309.36 (2) (c) Actual cost of postage, certified postage is allowed only as required by the courts or by statute.

**SECTION 7.** DOC 309.36 (3) is created to read:

DOC 309.36 (3) Any debt incurred because of a legal loan shall be maintained as part of the inmate’s account in all subsequent correctional placements and field supervision and shall be subject to repayment. Inmates are limited to only one \$200 legal loan in any calendar year regardless of transfer or placement, except as provided in (1).

**SECTION 8.** DOC 309.38 (3) (a) 6. is created to read:

DOC 309.38 (3) (a) 6. Inmates who are temporarily out of the institution, including those who are temporarily confined in another jurisdiction.

**SECTION 9.** DOC 309.45 is renumbered s. DOC 309.27 and s. DOC 309.27 (1) to (5), as renumbered, are amended to read:

DOC 309.27 (1) To promote the eventual successful reintegration of inmates into society through a policy designed to ensure that an inmate will have funds available upon release and can manage them responsibly.

DOC 309.27 (2) To prevent the exchange of contraband and victimization within institutions by prohibiting inmates from carrying money and by requiring all inmate funds to be deposited in accounts for the inmate.

DOC 309.27 (3) To develop a sense of responsibility on the part of inmates for payment of family financial obligations and debts.

DOC 309.27 (4) To permit inmates to obtain personal property in accordance with s. ~~DOC 309.35; and 309.20.~~

DOC 309.27 (5) To give inmates the opportunity to manage their funds in a manner consistent with ss. ~~DOC 309.45–309.52 309.27–309.37.~~

**SECTION 10.** DOC 309.46 is renumbered s. DOC 309.28 and amended to read:

**DOC 309.28 Deposit of money.** All money ~~in any form legally obtained and not excluded by statute~~ delivered to any institution for the benefit of an inmate shall be delivered to the institution business manager. The institution business manager shall credit the appropriate account in the name of the inmate in accordance with these sections and ch. DOC 324. The institution cashier or business manager shall be responsible for monitoring money received by inmates and referring any income from suspicious sources to a staff person designated to investigate such circumstances.

**SECTION 11.** DOC 309.465 (title) is renumbered s. DOC 309.29 (title) and amended to read:

**DOC 309.29 Crime victim, witness assistance surcharge and DNA surcharge.**

**SECTION 12.** DOC 309.465 is renumbered s. DOC 309.29 and amended to read:

**DOC 309.29 Crime victim, witness assistance surcharge and DNA surcharge.** For an inmate who ~~committed a crime on or after October 1, 1993, and who~~ has not paid the crime victim and witness assistance surcharge required under s. ~~ss. 973.045 and DNA surcharge as required under s. 973.046,~~ Stats., upon transfer to the first permanent placement and in all subsequent placements in correctional institutions, the institution business office shall deduct 25% of all income earned by or received for the benefit of the inmate until the surcharge is paid in full. The business office shall forward the funds to the state treasurer to satisfy the surcharge in accordance with s. ~~ss. 973.045 and 973.046,~~ Stats.

**SECTION 13.** DOC 309.466 (1) is renumbered s. DOC 309.30 (1) and amended to read:

DOC 309.30 (1) After the ~~crime victim and witness assistance surcharge has~~ state mandated surcharges have been paid in full, as provided for in s. DOC ~~309.465~~ 309.29, and upon transfer of the inmate to the first permanent placement and in all subsequent placements, the institution business office shall deduct 15% of all income earned by or received for the benefit of the inmate, except from work release and study release funds under ch. DOC 324, until \$500 the maximum amount is accumulated, and shall deposit the funds in a release account in the inmate's name. The maximum amount shall be established by the administrator.

**SECTION 14.** DOC 309.466 (2) is renumbered s. DOC 309.30 (2) and amended to read:

DOC 309.30 (2) Release account funds may not be disbursed for any reason until the inmate is released to field supervision, except to purchase adequate clothing for release and for out-of-state release transportation. Following the inmate's release, these funds shall be disbursed in accordance with s. ~~DOC 309.49~~ 309.33.

**SECTION 15.** DOC 309.466 (3) is renumbered s. DOC 309.30 (3).

**SECTION 16.** DOC 309.466 (4) is renumbered s. DOC 309.30 (4).

**SECTION 17.** DOC 309.47 is renumbered s. DOC 309.31 and amended to read:

**DOC 309.31 Receipts.** Inmates shall be provided with a receipt or monthly statement of transactions involving personal funds and shall receive a periodic statement from an the financial institution savings account containing the inmate's funds that is used for inmate saving accounts.

**SECTION 18.** DOC 309.48 (intro.) is renumbered s. DOC 309.32 (intro.) and amended to read:

**DOC 309.32 Procedure for inmate requests for disbursements of general account funds.** Each institution shall set forth in writing a procedure whereby inmates may request the disbursement of funds. This procedure shall be consistent with ss. DOC ~~309.45~~ 309.27 to ~~309.52~~ 309.37 and shall include the following information:

**SECTION 19.** DOC 309.48 (1) is renumbered s. DOC 309.32 (1) and amended to read:

DOC 309.32 (1) How and to whom requests must be made;₃

**SECTION 20.** DOC 309.48 (2) is renumbered s. DOC 309.32 (2) and amended to read:

DOC 309.32 (2) What information requests shall include;₃

**SECTION 21.** DOC 309.48 (3) is renumbered s. DOC 309.32 (3) and amended to read:

DOC 309.32 (3) Who investigates requests;₃

**SECTION 22.** DOC 309.48 (4) is renumbered s. DOC 309.32 (4) and amended to read:

DOC 309.32 (4) Who approves or disapproves requests;₃

**SECTION 23.** DOC 309.48 (5) is renumbered s. DOC 309.32 (5) and amended to read:

DOC 309.32 (5) Notice that the inmate may appeal to the superintendent warden any decision not made by the superintendent warden;

**SECTION 24.** DOC 309.48 (6) is renumbered s. DOC 309.32 (6) and amended to read:

DOC 309.32 (6) Notice that all decisions shall be in writing, shall state the underlying facts and shall be based on reasons consistent with s. DOC ~~309.45;~~ 309.27.

**SECTION 25.** DOC 309.48 (7) is renumbered s. DOC 309.32 (7) and amended to read:

DOC 309.32 (7) Time limits for decisions;₃ and₃

**SECTION 26.** DOC 309.48 (8) is repealed.

**SECTION 27.** DOC 309.49 is repealed.

**SECTION 28.** DOC 309.495 is renumbered s. DOC 309.34 and amended to read:

**DOC 309.34 Transportation for inmates upon release.** The department shall arrange for the transportation of an inmate released from an institution to the inmate's release placement location in the state, or shall give the inmate the means to procure transportation to that location. It shall be the responsibility of the inmate to provide the funding for out-of-state release transportation from the nearest city in Wisconsin to the inmate's destination.

**SECTION 29.** DOC 309.50 is renumbered s. DOC 309.35 and s. DOC 309.35 (3), as renumbered, is amended to read:

DOC 309.35 (3) Funds received by inmates for enrollment in programs within the institution and funded by the institution department shall be placed in a segregated account. Inmates shall be required to pay the costs of tuition and books from these funds. If an inmate refuses to do so, it may be grounds for removal from a program.

**SECTION 30.** DOC 309.51 (1) is renumbered s. DOC 309.36 (1) and amended to read:

**DOC 309.36 Funds for legal correspondence and copying.** (1) Correspondence to courts, attorneys, parties in litigation, the inmate complaint review system under ch. DOC 310 or the parole board may not be denied due to lack of funds, except as limited in this subsection. Inmates without sufficient funds in their general account to pay for paper, writing instruments, envelopes, photocopy work, or postage may receive a loan from the institution where they reside. No inmate may receive accrue more than \$200 debt annually in any calendar year under this subsection, ~~except that any.~~ Any amount of the debt the inmate repays during the year may be advanced to the inmate again without counting against the \$200 loan limit shall be applied to the oldest amount due. The \$200 loan limit may be exceeded with the superintendent's warden's approval if the inmate demonstrates an extraordinary need, such as a court order requiring submission of specified documents. The institution shall charge any amount advanced under this subsection to the against the inmate's general account as a legal loan account payable for future repayment. An inmate may be permitted to retain in the inmate's general account an amount of money specified, in writing, by the bureau of adult institutions division of adult institutions that is not subject to repayment of the loan.

**SECTION 31.** DOC 309.51 (2) (a) is renumbered s. DOC 309.36 (2) (a) and amended to read:

DOC 309.36 (2) (a) ~~Fifteen cents per page of photocopy;~~ Statutory rate for photocopying.

**SECTION 32.** DOC 309.51 (2) (b) is renumbered s. DOC 309.36 (2) (b) and amended to read:

DOC 309.36 (2) (b) ~~Two cents per sheet of paper~~ Institution canteen price of writing instruments, paper and envelopes.

**SECTION 33.** DOC 309.52 is renumbered s. DOC 309.37 and s. DOC 309.37 (1) (a) and (b), as renumbered, are amended to read:

DOC 309.52 (1) (a) Each institution shall maintain a canteen accessible directly or indirectly only to inmates to facilitate purchase of property approved under s. DOC ~~309.35~~ 309.20. Institution staff may consult with the inmate population in selecting canteen stock.

(b) The division of adult institutions shall establish, in writing, a maximum allowable amount of money that may be spent during a specified period of time. ~~The division should adjust this amount periodically to reflect the impact of inflation on purchasing power.~~

**SECTION 34.** DOC 309.55 (1) is renumbered s. DOC 309.38 (1) and DOC 309.38 (1) (a), (1) (b) (intro.), (1) (b) 1. to 4., as renumbered, are amended to read:

DOC 309.38 (1) (a) ~~Except as provided under sub. (7), this~~ This section shall govern compensation for inmates participating in approved work and program assignments while confined in a Wisconsin department of corrections correctional institution. This section does not apply to corrections industries or the prison farms, work release, or private sector ventures. Inmates participating in work and program assignments are not employees of the state.

(b) The purposes of this section are:

1. To provide uniform and fair compensation standards to encourage and reinforce positive inmate behavior;₃

2. To enable inmates to make approved purchases from the canteen and accumulate funds to assist them upon their release;₃

3. To encourage inmates to complete their assignments successfully;

4. To promote institutional order by providing inmates with an incentive for good behavior; ~~and~~

5. To encourage inmates to develop skills that will be useful in helping them to become reintegrated into the community upon release.

**SECTION 35.** DOC 309.55 (2) (title) is repealed.

**SECTION 36.** DOC 309.55 (2) (intro.) is repealed.

**SECTION 37.** DOC 309.55 (2) (a) is renumbered s. DOC 309.02 (14) and amended to read:

DOC 309.02 (14) “Full performance level” means the maximum level of performance expected on a work assignment or program assignment ~~other than school or vocational training~~ in terms of skills exhibited, output achieved, responsibility, diligence and effort shown, and level of supervision required.

**SECTION 38.** DOC 309.55 (2) (b) is renumbered s. DOC 309.02 (15).

**SECTION 39.** DOC 309.55 (2) (c) is repealed.

**SECTION 40.** DOC 309.55 (3) is renumbered s. DOC 309.38 (2) and amended to read:

DOC 309.38 (2) ELIGIBILITY. Except as provided under sub. (7), only inmates participating in approved work and program assignments while confined in a correctional institution shall be compensated. The method and manner of payment shall be established by department internal management procedure.

**SECTION 41.** DOC 309.55 (4) is renumbered s. DOC 309.38 (4) and amended to read:

DOC 309.38 (4) No compensation may be paid under this section to an inmate who does any of the following:

(a) Participates in a work release program approved under ch. DOC 324, unless the inmate participates in a work or program assignment in a correctional institution in addition to the work release program;

(b) Participates in a work or program assignment while assigned to the assessment and evaluation program at Dodge correctional institution;

(c) Refuses any work or program assignment;

(d) Is voluntarily unassigned; ~~or~~

(e) Is placed in one of the following segregated statuses:

1. Voluntary confinement under s. DOC ~~306.045~~ 306.05, unless the inmate requested placement in this status upon the recommendation or approval of the security director for the purpose of ensuring the inmate’s personal safety and the inmate was receiving pay immediately prior to placement in voluntary confinement;

2. Administrative confinement under ch. DOC 308, if the inmate was not receiving pay immediately prior to that placement and is not participating in an approved work or program assignment while in administrative confinement;

3. Observation under ch. DOC 311, if the inmate was not receiving pay immediately prior to that placement and is not participating in an approved work or program assignment while in observation status;

4. Adjustment segregation under s. DOC ~~303.69~~; 303.71.

5. Program segregation under s. DOC ~~303.70~~; ~~or~~ 303.72.

6. Controlled segregation under s. DOC ~~303.71~~ 303.74.

**SECTION 42.** DOC 309.55 (5) is repealed.

**SECTION 43.** DOC 309.55 (6) is repealed.

**SECTION 44.** DOC 309.55 (7) is renumbered s. DOC 309.38 (3) and amended to read:

DOC 309.38 (3) (a) Unless otherwise specified in this section, the department shall establish a uniform compensation rate less than ~~that for range one work assignments~~ the lowest work assignment rate for inmates an inmate who are is one of the following:

1. Involuntarily unassigned;

2. In sick cell status;

3. In hospital placement, including inmates transferred to mental health or medical facilities;

4. Unable to perform work assignments, such as elderly or disabled inmates, and not otherwise assigned under this section; ~~or~~

(b) An inmate who is in sick cell status or hospital confinement as a result of injury sustained in a job-related accident shall be compensated at the rate ~~he or she~~ the inmate was earning in ~~his or her~~ the inmate’s previous status.

**SECTION 45.** DOC 309.55 (8) is renumbered s. DOC 309.38 (8) and amended to read:

DOC 309.38 (8) ~~An inmate in temporary lockup shall be compensated at the rate earned in his or her previous status.~~ An inmate in temporary lockup, administrative confinement or observation status and eligible for compensation under this section shall receive the rate earned in ~~his or her~~ the inmate’s previous status not to exceed 40 hours per week.

**SECTION 46.** DOC 309.55 (9) is renumbered s. DOC 309.38 (9) and amended to read:

DOC 309.38 (9) An inmate who has a work or program assignment shall be compensated for the period of any lockdown required for search of an institution pursuant to ch. DOC 306, unless the lockdown is precipitated by the misconduct of any inmate, in which case, under s. DOC ~~306.14~~ 306.15 (2), only those inmates allowed to work to perform necessary housekeeping chores shall be compensated.

**Note:** DOC 309.45 is renumbered s. DOC 309.27.

Sentence #1 paragraph #1 is amended to read:

... DOC ~~309.45–309.52~~ 309.27–309.37 . . .

Sentence #4 paragraph #1 is amended to read:

... DOC ~~309.48~~ 309.32 (6) . . .

**Note:** DOC 309.46 is renumbered s. DOC 309.28.

Sentence #3 paragraph #1 is amended to read:

... DOC ~~309.45–309.52~~ 309.27–309.37 . . .

**Note:** DOC 309.465 is renumbered s. DOC 309.29.

Sentence #1 paragraph #1 is amended to read:

DOC 309.465 309.29 implements the crime victim and witness assistance surcharge established by s. 973.045, Stats., and DNA surcharge established by s. 973.046, Stats. . . .

**Note:** DOC 309.466 is renumbered s. DOC 309.30.

Sentence #1 paragraph #1 is amended to read:

DOC 309.466 309.30 . . .

Sentence #2 paragraph #1 is amended to read:

... DOC ~~309.45~~ 309.27 (1).

Sentence #7 paragraph #1 is amended to read:

Funds will be needed upon release to pay for housing, security deposits, food and transportation until employment is found; ~~especially since allowances for gate money and release clothing are eliminated effective July 1, 1986.~~

**Note:** DOC 309.47 is renumbered s. DOC 309.31.

Sentence #3, paragraph #1 is deleted.

**Note:** DOC 309.48 is renumbered s. DOC 309.32.

Sentence #1 is amended to read:

DOC ~~309.48~~ 309.32 . . .

Sentence #2 is amended to read:

... DOC ~~309.45–309.52~~ 309.27–309.37 . . .

**Note:** DOC 309.49 is renumbered s. DOC 309.33.

Sentence #1 paragraph #1 is amended to read:

DOC ~~309.49~~ 309.33 . . .

Sentence #2 paragraph #1 is amended to read:

... DOC ~~309.45~~ 309.27 . . .

Sentence #1 paragraph #2 is amended to read:

... to have funds spent for any reason consistent with DOC 309.27.

Sentences #2 and #3 paragraph #2 is deleted.  
 Sentence #1 paragraph #3 is amended to read:  
 . . .~~DOC 309.45 309.27~~ . . . ~~superintendent warden~~.  
 Sentence #1 paragraph #3 is amended to read:  
 . . .~~DOC 309.45 309.27~~.  
 Sentence #2 paragraph #3 is amended to read:  
 . . .~~DOC 309.45 309.27~~ . . .  
 Sentence #1 paragraph #4 is amended to read:  
 . . .~~superintendent warden~~.  
 Sentence #4 paragraph #4 is amended to read:  
 . . .~~30 days calendar month~~ . . .  
 Sentence #5 paragraph #4 is amended to read:  
 . . .~~DOC 309.47 309.27~~ . . .  
 Sentence #6 paragraph #4 is amended to read:  
 . . .~~DOC 309.02 309.09~~.  
 Sentence #1 paragraph #5 is amended to read:  
 . . .~~or purchase U.S. savings bonds~~.  
 Sentence #3 paragraph #5 is deleted.  
 Sentence #2 paragraph #5 is amended to read:  
 . . .~~DOC 309.45 309.27~~ . . .  
 Paragraph #6 is amended to read:  
 . . .~~DOC 309.44 309.27~~ . . .  
**Note:** DOC 309.50 is renumbered s. DOC 309.35.  
 Sentence #4 paragraph #2 is deleted.  
 Paragraph #3 is deleted.  
 Sentence #1 paragraph #3 is amended to read:  
 The ~~present~~ . . .  
**Note:** DOC 309.51 is renumbered s. DOC 309.36.  
 Sentence #2 paragraph #2 is amended to read:  
 . . .~~DOC 309.25–309.15~~ . . .  
 Sentence #7 paragraph #2 is amended to read:  
 . . .*Kendrick v. Bland*, 585 ~~586~~ F. Supp. 1536. . .  
**Note:** DOC 309.52 is renumbered s. DOC 309.37.  
 Sentence #1 paragraph #1 is amended to read:  
 . . .~~DOC 309.45 309.27~~  
 Sentence #2 paragraph #1 is amended to read:  
 DOC ~~309.35 309.20~~ . . .  
 Sentence #1 paragraph #3 is amended to read:  
 . . .~~DOC 309.45 309.27~~ . . .  
 Sentence #2 paragraph #3 is amended to read:  
 . . .~~DOC 309.48 309.32~~  
 Sentence #3 paragraph #3 is amended to read:  
 Table ~~309.55 309.38~~  
**Note:** DOC 309.55 is renumbered s. DOC 309.38.  
 Sentence #2 paragraph #3 is amended to read:  
 Table ~~309.55 309.38~~ . . .  
 Sentence #1 paragraph #4 is amended to read:  
 . . .s. ~~56.21~~\_\_\_\_, Stats. . .

### **Initial Regulatory Flexibility Analysis**

These rules are not expected to have an effect on small businesses.

### **Fiscal Estimate**

The provisions of ch. DOC 309 which relate to inmate accounts and compensation have not been updated since the rules were promulgated fourteen years ago. This rule makes technical changes, adds the DNA surcharge to the deductions to be collected from an

inmate's income, and allows the Department to determine the maximum amount to be accumulated in the inmate release account.

The procedural changes in this rule are not expected to have a state or local fiscal impact.

### **Contact Person**

Deborah Rychlowski, (608) 266–8426  
 Office of Legal Counsel  
 149 E. Wilson Street  
 P.O. Box 7925  
 Madison, WI 53707–7925

If you are hearing– or visually–impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non–English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non–English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

### **Written Comments**

Written comments on the proposed rules received at the above address no later than **September 5, 1997**, will be given the same consideration as testimony presented at the hearing.

### **Notice of Hearings**

#### **Corrections**

Notice is hereby given that pursuant to ss. 227.11 (2) (a), and 303.065, Stats., the Department of Corrections proposes a revision to ch. DOC 309, relating to inmate access to legal materials and legal services.

#### **Hearing Information**

<u>Date &amp; Time</u>	<u>Location</u>
<b>August 25, 1997</b> <b>Monday</b> 10:00 a.m. to 12:00 p.m. (noon)	<b>Room 223</b> <b>State Office Bldg.</b> <b>141 Northwest Barstow St.</b> <b>WAUKESHA, WI</b>
<b>August 26, 1997</b> <b>Tuesday</b> 2:00 p.m. to 4:00 p.m.	<b>Secretary's Conference Rm.</b> <b>Dept. of Corrections</b> <b>149 East Wilson St., 3rd Flr.</b> <b>MADISON, WI</b>
<b>August 28, 1997</b> <b>Thursday</b> 1:00 p.m. to 3:00 p.m.	<b>Rm. 105</b> <b>State Office Bldg.</b> <b>718 West Clairemont</b> <b>EAU CLAIRE, WI</b>

*The public hearing sites are accessible to people with disabilities.*

### **Analysis Prepared by the Department of Corrections**

Some provisions of the Department of Corrections administrative rules relating to legal materials and legal services for inmates have not been updated since the rules were created. With over 14 years of experience working with the rules, the Department proposes to update the rules.

Inmates have a constitutional right of access to courts. Access to legal materials and services is an integral part of access to courts. Without such access, an inmate does not have meaningful access to courts. This rule, like the current rule, requires the Department of Corrections to provide an inmate with access to legal materials and services.

Each institution, except correctional centers and the Wisconsin Resource Center, shall maintain a law library and make legal materials available to inmates at reasonable times and for reasonable periods.



The Department shall make reasonable efforts to ensure that adequate legal services are available to indigent inmates.

Inmates may provide legal services to other inmates except that institutions may regulate the time and place of such legal services. Compensation of any kind for the provisions of such inmate to inmate legal services is strictly prohibited.

### **Text of Rule**

SECTION 1. DOC 309.15 is created to read:

**DOC 309.15 Legal services.** (1) **POLICY.** It is the policy of the department to permit inmates reasonable access to the judicial process and to legal materials, and to afford a reasonable opportunity to prepare legal documents. Such access serves important rehabilitative goals and ensures effective procedures for raising and resolving complaints about institution practices and policies.

(2) **ACCESS TO COURTS.** Inmates shall have access to courts and administrative agencies. Inmates' decisions to seek judicial or administrative relief shall not adversely affect their program, security classification or assignment to an institution.

(3) **ACCESS TO LEGAL MATERIALS.** Each institution, except correctional centers and the Wisconsin resource center, shall maintain a law library and make legal materials available to inmates at reasonable times and for reasonable periods. Special provisions shall be made to provide access to legal materials for inmates with a special legal need and for inmates with a special need, such as illiteracy. The department may employ the use of current technology in providing access to legal materials.

(4) **ACCESS TO LEGAL ASSISTANCE.** The department shall make reasonable efforts to ensure that adequate legal services are available to indigent inmates. These legal services need not be provided directly by the department, but may be provided by outside agencies. The legal services by these agencies may include services provided by lawyers, law students and aides supervised by lawyers, and paraprofessionals.

(5) **INMATE TO INMATE LEGAL SERVICES.** Inmates may provide legal services to other inmates except that institutions may regulate the time and place of such legal services. Compensation of any kind for the provisions of such inmate to inmate legal services is prohibited. The department is not responsible for legal materials not provided by the department that are given to other inmates.

SECTION 2. DOC 309.25 to 309.29 are repealed.

### **Initial Regulatory Flexibility Analysis**

These rules are not expected to have an effect on small businesses.

### **Fiscal Estimate**

This administrative code change repeals ss. DOC 309.25 through DOC 309.29, recreates and consolidates all information in a single section, s. DOC 309.15. It also deletes the minimum recommended list of law library materials for all DOC institutions except correctional centers and the Wisconsin Resource Center.

Potential savings exist if some currently named materials are no longer provided, although the Department of Corrections will continue to provide at least the minimum, constitutionally upheld, well-stocked law library.

### **Contact Person**

Deborah Rychlowski, (608) 266–8426  
Office of Legal Counsel  
149 E. Wilson Street  
P.O. Box 7925  
Madison, WI 53707–7925

If you are hearing– or visually–impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non–English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non–English or sign language interpreter should make that request

at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

### **Written Comments**

Written comments on the proposed rules received at the above address no later than **September 5, 1997**, will be given the same consideration as testimony presented at the hearing.

## **Notice of Hearings**

### **Corrections**

Notice is hereby given that pursuant to ss. 227.11 (2) (a), and 303.065, Stats., the Department of Corrections proposes the revision of ch. DOC 311, relating to inmates in observation status for mental or medical health reasons.

### **Hearing Information**

<u>Date &amp; Time</u>	<u>Location</u>
August 25, 1997 Monday 10:00 a.m. to 12:00 p.m. (noon)	Room 223 State Office Bldg. 141 Northwest Barstow St. WAUKESHA, WI
August 28, 1997 Thursday 1:00 p.m. to 3:00 p.m.	Rm. 105 State Office Bldg. 718 West Clairemont EAU CLAIRE, WI
August 29, 1997 Friday 2:00 p.m. to 3:00 p.m.	Secretary's Conference Rm. Dept. of Corrections 149 East Wilson St., 3rd Flr. MADISON, WI

*The public hearing sites are accessible to people with disabilities.*

### **Analysis Prepared by the Dept. of Corrections**

The Department of Corrections is responsible for the physical safety of inmates and staff. Inmates with certain mental and medical health conditions may threaten the safety of the inmate or others. The Department uses observation status to remove these inmates from the general population.

Observation is a nonpunitive measure taken to ensure the safety of the inmate or others. Observation is used when an inmate is mentally ill and dangerous, is a danger to self, has a communicable illness or other medical problem requiring separation, or refuses testing for a communicable illness. Observation is a temporary status.

This rule–making order repeals and recreates the Department's rule placing inmates in observation for mental or medical health reasons. These rules are repealed and recreated to clarify, to separate mental health observation from medical observation, and to update the rules. These rules prescribe the method used by the Department to maintain order and security in prisons when inmates' mental and medical health risk order and security.

These revised rules broaden the category of inmates who may be placed in observation and includes inmates who are "dangerous to self" and inmates who "refuse testing for communicable illness". The revised rules state the criteria for placing an inmate in mental health or medical observation.

These rules provide for the separation of an inmate with mental illness from the general population. These rules carry over the previous mental health criteria. In the mental illness criterion used to determine dangerousness, "fear" has been changed to "belief".

The medical criteria delete listing the kinds of medical problems that might require an inmate to be placed in observation. The medical health criteria add an inmate who refuses to be tested for communicable illness to the criteria.

These rules identify who may place an inmate in observation. An appropriate mental health or medical staff member will be notified immediately and an examination will be done within 2 working days

of the inmate being placed in observation. Within 24 hours of placement in observation or as soon as possible after the examination, the inmate is to be informed of the reasons for placement in observation and the findings of the examination.

These rules limit the time an inmate may be placed in observation for mental health reasons to 15 days after the examination. A review may extend the inmate's time in observation beyond 15 days. The rules provide for notice of the review and provide the inmate in mental health observation the following:

1. The right to be present at the review.
2. The right to deny the allegation.
3. The right to an advocate.
4. The right to present or have the advocate present information obtained from witnesses.
5. The right to present documentary evidence.
6. The right to question witnesses.
7. The right to receive a written decision, stating the reasons for it based upon the evidence.
8. The right to appeal the findings if the inmate has not received a timely review.

Inmates may not be placed in mental health observation for more than 15 days unless proceeding for the inmate's civil commitment have been initiated or the commitment obtained or the review of dangerousness to self has been initiated and notice of the review of continued mental health placement has been served.

These rules provide for seeking of civil commitment for an inmate in need of treatment at a mental health or medical facility.

These rules allow an inmate placed in observation for medical health reasons to remain in observation for a reasonable period of time. Observation status of an inmate for medical health reasons allows time for diagnosis or treatment or both. The inmate in medical observation has the right to immediate appeal to the secretary if the inmate has not received a timely review.

These rules provide for the humane treatment of the inmate placed in observation.

## **Text of Rule**

**SECTION 1.** Chapter DOC 311 is repealed and recreated to read:

### **Chapter DOC 311**

#### **OBSERVATION STATUS**

**DOC 311.01 Purpose.** The purpose of this chapter is to provide for an involuntary or voluntary nonpunitive status to be used for the temporary confinement of an inmate to ensure the inmate's safety and the safety of others if the inmate is mentally ill and dangerous, is dangerous to himself or herself, has a medical problem that requires separation from the population for treatment, or refuses testing for a communicable illness. This is consistent with the department's goal of ensuring personal safety and security within an institution.

**DOC 311.02 Applicability.** Pursuant to authority vested in the department of corrections under s. 227.11 (2), Stats., the department adopts this chapter which applies to the department, the division and all inmates in its legal custody. It interprets ss. 302.07, 302.08 and 302.36, Stats.

**DOC 311.03 Definitions.** In this chapter:

- (1) "Administrator" means the administrator, division of adult institutions, department of corrections, or his or her designee.
- (2) "Clinical services staff member" means a clinician, crisis intervention worker, or psychological services associate employed by the department.
- (3) "Clinician" means an individual trained as a clinical psychologist or an individual employed as a staff psychologist by the department.

(4) "Communicable illness" means an illness caused by a disease that the department of health and social services determines, under ch. HSS 145, to be communicable.

(5) "Crisis intervention worker" means a crisis intervention worker employed by the department or a psychologist designated by the warden to act as a crisis intervention worker.

(6) "Department" means the department of corrections.

(7) "Division" means the division of adult institutions, department of corrections.

(8) "Health services staff member" means a physician, registered nurse or physician's assistant employed by the department.

(9) "Physician" means an individual licensed as a physician in the state of Wisconsin and employed by the department.

(10) "Secretary" means the secretary of the department of corrections, or his or her designee.

(11) "Security director" means the security director of an institution, or his or her designee.

(12) "Shift captain" means the shift captain of an institution, or his or her designee.

(13) "Warden" means the warden of an institution, or his or her designee.

(14) "Working days" means all days except Saturdays, Sundays, and legal holidays.

**DOC 311.04 Mental health placement.** (1) Observation for mental health purposes is an involuntary or a voluntary nonpunitive status used for the temporary confinement of an inmate to ensure the safety of the inmate or the safety of others. An inmate may be placed in observation for mental health purposes for one of the following reasons:

(a) The inmate is mentally ill and dangerous to himself or herself or others.

(b) The inmate is dangerous to himself or herself.

(2) An inmate is mentally ill if there is substantial evidence that the inmate has a substantial disorder of thought, mood, perception, orientation or memory which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life in an institution, but does not include alcoholism.

(3) An inmate is dangerous if there is a substantial probability that the inmate will cause physical harm to himself or herself or others as manifested by any of the following:

(a) Recent homicidal or other violent behavior.

(b) The reasonable belief of others that violent behavior and serious physical harm is likely to occur because of a recent overt act, attempt or threat to do such physical harm.

(c) Serious self-destructive behavior or a threat of such behavior.

(d) The inability to cope with life in the institution to the degree that himself or herself or others are thereby endangered.

(4) An inmate may be placed in observation by any of the following:

(a) A clinician, crisis intervention worker or physician.

(b) The warden.

(c) A registered nurse or physician's assistant, if a person under (a) is not available for consultation either directly or by telephone.

(d) The security director or shift captain if a clinician, crisis intervention worker or physician is not available for consultation either directly or by telephone.

(5) Any staff member or inmate may recommend to any person authorized to place an inmate in observation that an inmate be placed in observation under sub. (4). The staff member or inmate shall state the reasons for the recommendation and describe the inmate's conduct that underlies the recommendation.

(6) At the time of placement the inmate shall be informed orally of the reasons for placement.

**DOC 311.05 Examination of mental health placement.** (1) An inmate placed in observation shall be examined by a clinician, crisis intervention worker or physician. The examination shall include a direct personal evaluation and a review of recent relevant information.

(2) If an inmate is placed in observation by the warden, registered nurse, physician's assistant, security director or shift captain, a clinician, crisis intervention worker or physician shall be notified immediately of the placement and shall examine the inmate within 2 working days.

(3) Within 24 hours or as soon as possible after the examination, the clinician, crisis intervention worker or physician shall advise the inmate orally of the finding of the examination. Written results of the examination shall be provided to the inmate within 10 working days of the examination.

(4) An inmate in observation for a mental health placement will be examined by a clinician, crisis intervention worker or physician at least every 2 working days.

(5) Examination by a clinician, crisis intervention worker or physician may result in a recommendation for continued placement in observation or in a recommendation for the inmate's immediate release from observation.

**DOC 311.06 Continued mental health placement.** (1) No inmate in observation for a mental health placement may remain in observation for longer than 15 working days from the initial examination without a clinician, crisis intervention worker or physician making a decision for continued placement.

(2) An inmate placed in mental health observation due to mental illness and dangerousness may continue in the placement after 15 working days if both of the following situations exist:

(a) The proceedings for the inmate's civil commitment under ch. 51, Stats., have been initiated or the commitment obtained.

(b) The inmate has been served notice of the review of continued mental health placement under s. DOC 311.06 (2).

(3) An inmate placed in mental health observation due to dangerousness to self may continue in the placement after 15 working days only if both of the following situations exist:

(a) The proceedings for a review of dangerousness to himself or herself have been initiated.

(b) The inmate has been served notice of the review of continued mental health placement under s. DOC 311.06 (3).

**DOC 311.07 Review of continued mental health placement.**

(1) A clinician, crisis intervention worker or physician may continue a mental health placement in observation for longer than 15 working days if there is a review of continued mental health placement under this section.

(2) The inmate shall be given written notice of the review prior to the 15th working day of his or her placement and no less than 2 working days prior to the review. The notice shall include all of the following:

(a) The allegation of the inmate's mental illness and dangerousness to himself or herself or dangerousness to others.

(b) The standards used to determine mental illness and dangerousness to himself or herself or dangerousness to others.

(c) The evidence to be considered at the review.

(d) The sources of information relied upon unless such disclosure would threaten the personal safety of the person providing the information or institution security.

(e) An explanation of the possible consequences of any decision regarding the inmate's mental health placement.

(f) Notice of the inmate's rights at the review. The notice shall include all of the following:

1. The right to be present at the review.

2. The right to deny any allegation which relates to the inmate's observation status.

3. The right to an advocate in accordance with s. DOC 303.79.

4. The right to present or have the advocate present information obtained from witnesses.

5. The right to present documentary evidence.

6. The right to question witnesses.

7. The right to receive a written decision, stating the reasons for the decision based upon the evidence.

8. The right to appeal the review of dangerousness to self decision.

(g) The date, time and place of the review and an order that the inmate appear at the review.

(3) The review shall take place not sooner than 2 working days and not later than 5 working days after service of notice to the inmate. The inmate may waive this review or the time limits under this subsection. The waiver shall be in writing.

(4) At the review, the clinician, physician or crisis intervention worker shall do all of the following:

(a) Read aloud the allegations of the inmate's dangerousness and mental illness or dangerousness to himself or herself.

(b) Provide all witnesses present, including the inmate and the staff member who recommended the placement into observation, a chance to speak.

(c) Require any relevant medical and psychological evidence to be offered.

(d) Allow questioning of the witnesses. Questioning may be direct or the inmate may submit questions to be asked of the witnesses.

(e) Prohibit repetitive, disrespectful or irrelevant questions.

(f) Determine whether a witness shall be called.

(g) Determine whether the identities of sources of information relied upon or any statements or evidence should be included in the written record because personal safety or institution security is implicated.

(h) Record the fact of the omission of the identities of sources of information in the record.

(5) After the review, the clinician, crisis intervention worker or physician, shall deliberate in private on all of the following:

(a) The evidence presented and the inmate's records.

(b) Whether the standard for dangerousness has been met.

(c) Whether the standard for mental illness has been met.

(6) After deliberation, the clinician, crisis intervention worker, or physician shall decide all of the following:

1. Whether the inmate is mentally ill and dangerous or whether the inmate is dangerous to himself or herself.

2. Whether the inmate is to continue in observation.

(7) The clinician, crisis intervention worker or physician shall give reasons for the decision to the inmate in writing within two working days after the review.

(8) There shall be a clinical review of an inmate in observation at least once every 15 working days and the procedures for review shall be followed.

**DOC 311.08 Civil commitment.** If, in the opinion, of the attending clinician, crisis intervention worker or physician, an inmate in observation is in need of additional treatment at a mental health or medical facility, such recommendation shall be made to the warden for approval of the transfer and the inmate may be transferred pursuant to s. 51.37 (5) or s. 51.20, Stats.

**DOC 311.09 Review of dangerousness to self.** (1) If, in the opinion of the attending clinician, crisis intervention worker or physician, an inmate in observation is in need of placement in observation longer than 15 working days from the examination under s. DOC 311.05, the attending clinician, crisis intervention worker or physician shall refer the decision to the administrator for review.

(2) The administrator shall assign a psychologist from an institution other than the institution seeking the continued observation placement to conduct the review, to examine the inmate and to review the documentation of the case.

(3) The review shall include all of the following:

(a) Reasons for belief of dangerousness to himself or herself.

(b) Reasons for need for continued placement in observation.

(c) Reasons alternative interventions are inappropriate or inadequate.

(4) The assigned psychologist shall do all of the following:

(a) Submit a written report of the examination.

(b) Review the records and findings regarding dangerousness to himself or herself.

(c) Determine the need for continued placement in observation.

(d) Determine the availability of alternative interventions.

(5) The inmate and his or her advocate, if one is chosen, shall receive a copy of all of the following:

(a) The documentation of the review of continued commitment.

(b) The findings of the review of continued commitment.

(c) The referral for review of dangerousness to himself or herself.

(d) The report of the appointed evaluator.

(5) The inmate and the advocate may respond in writing within 5 working days to the any or all of the following information:

(a) The allegations of dangerousness to himself or herself.

(b) The need for continued placement in observation.

(c) The availability of alternative interventions.

(6) The assigned psychologist shall decide whether an inmate is dangerous to himself or herself and whether the inmate is in need of continued placement in observation. The reasons for the decision shall be given to the inmate in writing within two working days after the decision is made.

(7) An assigned psychologist shall conduct a review of dangerousness to self of an inmate in mental health observation at least once every 30 working days to determine whether the inmate is dangerous to himself or herself, and the procedures for review shall be followed.

**DOC 311.10 Medical placement.** (1) Observation for medical purposes is an involuntary or voluntary, nonpunitive status used for the temporary confinement of an inmate to ensure the inmate's safety and the safety of others if one or both of the following exists:

(a) The inmate has, or is suspected of having, a medical problem that requires separation from the population for treatment by a physician.

(b) An inmate is refusing testing for communicable illness.

(2) An inmate may be placed in observation by any of the following:

(a) A physician.

(b) The warden.

(c) A clinical or health services staff member, the security director or the shift captain, if a physician is not available for consultation either directly or by telephone.

(3) Any staff member or inmate may recommend to any person authorized to place an inmate in observation that an inmate be placed in observation. The staff member or inmate shall state the reasons for the recommendation and describe the inmate's symptomatology that underlies the recommendation. The inmate shall be provided with a written copy of the reasons for the recommendation within 10 working days of the recommendation.

(4) At the time of placement the inmate shall be informed orally of the reasons for placement.

**DOC 311.11 Medical examination.** (1) An inmate placed in observation shall be examined by a physician. The examination shall include a direct personal evaluation and a review of relevant information.

(2) If an inmate is placed in observation by a person under s. DOC 311.10 (2), a physician shall be notified immediately of the placement and shall examine the inmate within 2 working days.

(3) Within 24 hours or as soon as possible after the examination, the inmate shall be advised of the reasons for the placement and findings of the examination. The physician shall provide written notification of the findings of the examination within a reasonable period of time.

**DOC 311.12 Continued medical placement.** (1) An inmate placed in medical observation may remain in medical observation for

a reasonable period of time for diagnosis and treatment or as needed, as determined by a physician, until such time as a physician determines that the inmate no longer requires separation from the population.

(2) An inmate placed in observation shall receive periodic reviews of the medical placement status by a physician. The frequency of the periodic review shall be based on the inmate's medical diagnosis and the physician's professional judgment.

**DOC 311.13 Appeals.** (1) An inmate placed in observation shall have the immediate right to appeal such placement decision to the administrator under any of the following circumstances:

(a) The inmate has not received a timely review under s. DOC 311.05 (2).

(b) The inmate in observation for mental health purposes due to dangerousness to himself or herself wishes to challenge the review of dangerousness to self decision.

(2) The administrator may request an additional clinical or medical assessment of the inmate's condition prior to the administrator's written decision which shall be issued to the inmate and clinical or medical staff within 5 working days of receipt of the appeal.

(3) An inmate may appeal the administrator's written decision to the secretary who shall issue a written decision within 5 working days of the appeal.

**DOC 311.14 Conditions of confinement while in observation.**

(1) An inmate in observation shall be confined alone in a well-ventilated, sanitary, secure cell equipped with an observation port. Conditions, including privileges and properties, shall, insofar as possible, be the same as those in the status from which the inmate came prior to the observation placement. A staff member who is authorized in s. DOC 311.04 (4) to place an inmate in observation may change the inmate's condition of confinement if the staff member reasonably believes any of the following:

(a) These privileges or properties may be used by the inmate, or another inmate also in the observation unit, for self-harm or to harm others.

(b) The properties cannot be moved conveniently to the observation cell.

(c) The privileges cannot be offered due to the secured nature of the observation unit.

(d) The properties or privileges are clinically or medically contraindicated.

(2) The appropriate privileges and properties to be allowed the inmate in observation shall be determined by the clinician, crisis intervention worker or physician at the time of the examination of the inmate, after a consultation with the supervisor of the unit.

(3) If any of the privileges or properties are used by the inmate or another inmate also in the observation unit for self-harm or harm to others, or otherwise seriously disrupts the safe, efficient operation of the observation unit, the privileges or properties shall be withdrawn immediately by the staff member noting the problem.

(4) The warden has final authority regarding privileges or property of an inmate in observation. The warden shall review and either approve or disapprove a decision regarding inmate privileges or properties. The warden shall take appropriate and prompt action.

**DOC 311.15 Monitoring and recording.** (1) For an inmate placed in observation for mental health purposes, a staff member shall have immediate access to the inmate and shall accompany the inmate at all times while in unsecured areas.

(2) Staff shall observe and record the activities of the inmate at least once every 15 minutes with appropriate documentation made of significant incidents involving the inmate.

**DOC 311.16 Release from observation.** Upon release from observation the inmate shall be returned to previous status and assignment if possible and advisable.

**Note:** DOC 311. Observation is a nonpunitive measure taken to ensure the safety of the inmate or others during the crisis period. Hopefully, by confining the inmate under observation for a short time, the personal crisis will subside without any harm being done to the inmate or to others. Examples of personal crisis are situations in which

an inmate receives discouraging or disheartening news from his or her family and evidences a mental health problem and dangerousness and temporarily needs emotional support and observation because of the possibility of attempted self–harm or harm to others; or when an inmate is in an emotional depression and needs to be carefully watched because of the possibility of attempted self–harm or harm to others; or when an inmate has attempted to commit suicide and shows signs of another attempt.

Alcoholic and drug dependent inmates shall be placed in observation only if treatment is necessary and cannot be provided while the inmate is in the general population.

Subsection DOC 311.04 set forth the standards to be used in determining dangerousness and mental illness. They are similar to the standards used to determine dangerousness and mental illness for involuntary civil commitment under s. 51.20, Stats. The analogy between the standards is apt since both are vehicles for removing dangerous persons from the population in which they live.

Subsections DOC 311.04 and 311.10 authorize certain people to place an inmate in observation. Ideally, placement should be made by highly trained personnel, and the clinician, crisis intervention worker, physician or warden should authorize all placements. However, experience teaches that this is not always possible. Thus, others are authorized to place inmates in observation, but in such cases the clinician, crisis intervention worker, or physician review that placement in no longer than 2 working days. The clinician, crisis intervention worker or physician decides on the necessity of continued placement with allowed privileges, and properties or the immediate release of the inmate from observation.

Subsection DOC 311.05 (4) provides for a review of the inmate's status at least once every 2 working days for mental health placements in observation. An earlier review may occur. These time periods provide for regular and appropriate reviews of placements in observation.

The kinds of property and privileges allowed in observation may differ substantially, and great care should be exercised in determining which properties and privileges should be allowed an inmate.

If, in the opinion of the clinician, crisis intervention worker or physician, observation is not sufficient to properly handle the mental health concerns, commitment procedures under s. 51.20, Stats., or transfer procedures under s. 51.37 (5), Stats., should be pursued. However, experience teaches that mental health institutions are reluctant to accept transfers of inmates for placement or transfer under ss. 51.20 and 51.37 (5), Stats., and hopefully the provisions under ss. DOC 311.04 to 311.07 will be adequate to handle an inmate's crisis.

Subsections DOC 311.07 and 311.12 provide that an inmate may be continued in observation after a special review. Review of continued mental health placement contains due process protections of the major disciplinary hearing. Due process protections are important and are afforded the few inmates affected by this provision because the seriousness of this confinement parallels civil commitment. At these special reviews, dangerousness and mental illness shall be the only criteria for placement in this status.

Subsection DOC 311.07 provides the inmate with adequate written notice of the review. Subsection DOC 311.07 (3) (g) note that safety and security may be breached if certain testimony or evidence is allowed into the open record. In such cases, review shall deal with the omissions as noted under s. DOC 311.07 (3) (h). See the major disciplinary procedures.

Subsection DOC 311.07 (2) provides for the time of the review. The inmate may waive the review as well as the time limits. To ensure that any waiver is a knowing intelligent one, the inmate must be informed of his or her right to a review and what that entails; the inmate must be informed of what the review will be like if he or she waives the time limits; and the waiver must be in writing. The waiver is not an admission of dangerousness or mental illness.

Placement of an inmate in observation status is not thought to implicate the interests cited in *Vitek v. Jones* 100 S.Ct. 1254 (1980). In *Vitek*, the transfer was to a separate institution which was solely for mentally ill people. A person in observation status in Wisconsin

frequently will remain in his or her own cell or room. Sometimes, the person is transferred to a different cell, for their own protection or so that they can be more carefully observed to prevent self–destructive conduct.

If in the opinion of the clinician, crisis intervention worker, or physician additional treatment is needed, commitment proceeding pursuant to ch. 51, Stats., are commenced. These proceedings do more than *Vitek* requires for the transfer of an inmate to a mental health institution.

A staff member must have direct access to an inmate in the event that a problem develops, and a staff member must observe the inmate often to ensure that the inmate is safe.

If observation is not continued under s. DOC 311.09 or the inmate is not transferred under s. 51.20 or s. 51.37 (5), Stats., the inmate is returned to his or her previous status. Since observation is a nonpunitive status, every attempt should be made to have inmates resume previous assignments.

Section DOC 311.10 provides for the placement of an inmate in medical observation if the inmate is suspected of having a medical problem which requires the inmate to be separated from the general population or if the inmate refuses testing for a communicable disease. Section DOC 311.12 provides that an inmate may be continued in observation for a reasonable period of time for diagnosis, treatment or as needed as determined by a physician. An inmate in medical observation is to receive periodic reviews of the medical placement as determined by the physician.

This chapter is in substantial accord with the provisions regarding the special management of inmates in the American Correctional Association's Manual of Standards for Adult Correctional Institutions standards 3–4238, 3–4241, 3–4245, 3–4246, 3–4249, and 3–4261.

### **Initial Regulatory Flexibility Analysis**

These rules are not expected to have an effect on small businesses.

### **Fiscal Estimate**

This fiscal estimate is for the sections of ch. DOC 311, relating to placement of inmates in observation status for mental or medical health reasons.

These rules update and modify the sections of the Department's rules relating to observation status, which is a nonpunitive measure taken for the safety of an inmate or others. These rules are repealed and recreated to clarify, to separate mental health observation from medical observation, and to update the rules.

These rules extend the category of inmates who may be placed in observation to include inmates who are "dangerous to self" and inmates who "refuse testing for communicable illness." These rules also provide for the separation of inmates with mental illnesses from the general population.

These rules require the direct personal evaluation of an inmate in a mental health placement by a clinician, crisis intervention worker, or physician.

It is expected that these rules may require some incremental increase in clinician time. This can be absorbed by existing Departmental resources.

### **Contact Person**

Deborah Rychlowski, (608) 266–8426  
Office of Legal Counsel  
149 E. Wilson Street  
P.O. Box 7925  
Madison, WI 53707–7925

If you are hearing– or visually–impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non–English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non–English or sign language interpreter should make that request

at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

### Written Comments

Written comments on the proposed rules received at the above address no later than **September 5, 1997**, will be given the same consideration as testimony presented at the hearing.

## Notice of Hearings

### Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 227.17, 301.45, and 301.46, Stats., the Department of Corrections proposes ch. DOC 332, relating to registration of sex offenders and access to information concerning sex offenders. These hearings relate to both the proposed permanent rule and the emergency rule now in effect and published on June 1, 1997.

### Hearing Information

<b>August 27, 1997</b> Wednesday 1:00 p.m. to 4:00 p.m.	<b>Rm. 120, State Office Bldg.</b> 141 N. W. Barstow St. WAUKESHA, WI
<b>August 28, 1997</b> Thursday 10:00 a.m. to 1:00 p.m.	<b>Public Auditorium</b> Wood Co. Courthouse 400 Market St. WISCONSIN RAPIDS, WI
<b>August 29, 1997</b> Friday 9:00 a.m. to 12:00 p.m.	<b>Room 041, GEF III Bldg.</b> 125 South Webster St. MADISON, WI

*The public hearing sites are accessible to people with disabilities.*

### Analysis Prepared by the Department of Corrections

These rules are pursuant to recently enacted legislation, ss. 301.45 and 301.46, Stats., relating to sex offender registration and access to information concerning sex offenders. These rules require that sex offenders register information with the sex offender registry at regular intervals, update information, and verify the accuracy of information. These rules specify the type of information that must be provided and the methods of registration, updating and verification.

These rules identify how the Department of Corrections will maintain the sex offender registry and under what circumstances information in the registry can be expunged. These rules require supervising agencies to notify offenders of the registration requirement, but alert offenders that failure to receive notice is not a defense to any penalty for failure to register. In addition to criminal penalties for failure to register provided at s. 301.45 (6), Stats., these rules provide that for offenders on supervision failure to register is a violation of that supervision. These rules direct the Department to notify district attorneys of any intentional failure to provide registry information.

These rules allow access to registry information by law enforcement. In addition, victims, community entities, and the general public are allowed various levels of access to registry information. These rules clarify that access by entities, victims, and the general public to selected information contained in the sex offender registry is available upon request and when identifying information concerning a particular offender is supplied by the requester.

### Initial Regulatory Flexibility Analysis

Notice is hereby given that pursuant to s. 227.114, Stats., it is not anticipated that the emergency or permanent rule will have an economic impact on small businesses.

### Fiscal Estimate

These rules implement the reporting of information to the sex offender registry as required by s. 301.45, Stats., and allow access to

information in the sex offender registry required by s. 301.46, Stats. The intent of the Department in promulgating these rules is to comply with these recently enacted statutory provisions.

These administrative rules should not have a Departmental fiscal effect separate from the statutory effect.

### Contact Person

To obtain a copy of either the emergency or permanent rule or for more information concerning the hearings, write or phone:

Robert G. Pultz, (608)267-0922  
Office of Legal Counsel  
149 E. Wilson Street  
P.O. Box 7925  
Madison, WI 53707-7925

### Written Comments

Written comments concerning the rules received at the above address no later than **September 4, 1997**, will be given the same consideration as testimony presented at the hearings.

## Notice of Hearing

### Employe Trust Funds

The Wisconsin Department of Employe Trust Funds will hold a public hearing to review a proposed rule, which creates s. ETF 10.65, Wis. Adm. Code, relating to refunding contributions to the Wisconsin Retirement System that exceed contribution limits set forth in internal revenue code and state statutes, in accordance with the provisions of s.227.16 (1), Stats. The public hearing will be held on **Wednesday, August 27, 1997 at 9:00 AM in Room 2A, 801 West Badger Road, Madison, Wisconsin.**

### Written Comments

The public record on this proposed rule making will be held open until **4:00 p.m. on September 3, 1997** to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Linda Owen, Department of Employe Trust Funds, 801 West Badger Road, P.O. Box 7931, Madison, Wisconsin 53707-7931.

### Analysis Prepared by the Wisconsin Department of Employe Trust Funds

Authority for Rule: ss. 40.05 (2r) and 40.32

Statutes Interpreted: ss. 40.02 (17), 40.05 (2r) and 40.32

Contributions to the WRS are limited by section 415(c) of the internal revenue service code and by s. 40.32, Stats., requires the department to refund any employe and/or employer contributions that exceed those limits. A rule is needed to define the sequence in which contributions will be refunded, the methods of refund and the corresponding effects on WRS earnings and creditable service.

*General Summary of Rule.* If a participant's and/or an employer's contributions exceed the limits in s. 40.32, s. 40.32 (3), Stats., specifies that the department shall first refund amounts voluntarily contributed by a participating employe, either as employe additional contributions or monies paid to purchase creditable service. This rule specifies the order in which contributions would be refunded in a certain sequence until the requirements of s. 40.32 have been met.

If the contribution limits made by a participating employe or by an employer on behalf of a participating employe exceed the contribution limits, the contributions will be refunded in the following order; employe additional contributions, employe payments to purchase creditable service, employer additional contributions, employer payments to purchase creditable service, benefit adjustment contributions and employe and employer required contributions. In the event that it becomes necessary to refund benefit adjustment and required contributions, the earnings and hours of

service for the annual earnings period(s) reflected will be reduced in proportion to the amount of benefit adjustment and required contributions refunded to preclude unfunded benefit liabilities based on service and earnings for which no contributions are credited to the employe and/or employer reserves.

### **Fiscal Estimate**

The Department estimates that there will be no direct fiscal impact from this rule making upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, technical college school district or sewerage district, other than the reduction of fiscal liabilities that would result if employer–paid contributions are refunded under this rule.

### **Initial Regulatory Flexibility Analysis**

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

### **Copies of Rule and Contact Person**

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707, telephone (608) 261–8167. For questions about this rule making, please call Linda Owen, Benefit Plan Policy Analyst, (608) 261–8164.

## **Notice of Hearing**

### *Employe Trust Funds*

The Wisconsin Department of Employee Trust Funds will hold a public hearing to review a proposed rule, which creates s. ETF 10.79, Wis. Adm. Code, relating to the Department of Employee Trust Funds procedures for locating missing participants and transferring the balances of abandoned accounts to the annuity reserve. The public hearing will be held on **Thursday, August 28, 1997 at 9:00 AM in Room 2A, 801 West Badger Road, Madison, Wisconsin.**

### **Written Comments**

The public record on this proposed rule making will be held open until **4:00 p.m. on September 3, 1997** to permit the submission of written comments from persons unable to attend the public hearing in person, or who wish to supplement testimony offered at the hearing. Any such written comments should be addressed to Linda Owen, Department of Employee Trust Funds, 801 West Badger Road, P.O. Box 7931, Madison, Wisconsin 53707–7931.

### **Analysis Prepared by the Wisconsin Department of Employee Trust Funds**

Authority for Rule: s. 40.08 (8)

Statute Interpreted: s. 40.08(8)

Section 40.08 (8), Stats., defines the conditions under which a participant's or alternate payee's WRS account will be considered abandoned. This section makes several references to the Department making "reasonable efforts" to locate missing participants, alternate payees and beneficiaries before the account is either paid to a deceased participant's or alternate payee's beneficiary(ies) or estate under the provisions of s. 40.08 (8) (a) 1. or 2m., Stats., or considered abandoned and the monies in the account transferred to the employer accumulation reserve under the provisions s. 40.08 (8) (a) 2., 2m., 3. or 4. or (8) (b), Stats. The purpose of this rule is to define the "reasonable efforts" that the Department will make to locate these individuals before the account is considered abandoned. Once the account is abandoned the account can be restored and the benefits paid to the appropriate payee within 10 years after the account is considered abandoned and the funds transferred into the employer accumulation reserve.

*General Summary of Rule.* The proposed rule would codify the Department's current policies and practices for locating missing participants, alternate payees and beneficiaries, and identify additional resources which the Department may decide to utilize based on cost and effectiveness. Past and current practices include requiring employers to provide current addresses for terminating employes, requesting members to provide Social Security numbers and current addresses for beneficiaries on beneficiary designation forms, stressing in the Department's publications the importance of notifying the department of address changes, contacting other state agencies such as the Departments of Revenue and/or Transportation for current addresses for participants the Department cannot locate, etc. Current and future resources may include contracting for private locator and database services, plus other resources that may become available in the future.

While this rule identifies current practices and resources currently available, it does not require the Department to utilize any specific types of resources or services nor restrict the Department from using other types of resources. As technology progresses and new data sources become available, it is important to retain the flexibility to utilize the options that are determined to be the most efficient and cost effective and within reasonable costs.

### **Fiscal Estimate**

The Department estimates that there will be no direct fiscal impact from this rule making upon the state and anticipates no effect upon the fiscal liabilities or revenues of any county, city, village, town, school district, technical college school district or sewerage district.

### **Initial Regulatory Flexibility Analysis**

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

### **Copies of Rule and Contact Person**

Copies of this rule are available without cost by making a request to the Department of Employee Trust Funds, Office of the Secretary, P.O. Box 7931, Madison, Wisconsin 53707, telephone (608) 261–8167. For questions about this rule, please call Linda Owen, Benefit Plan Policy Analyst, (608) 261–8164.

## **Notice of Hearing**

### *Regulation & Licensing*

Notice is hereby given that pursuant to authority vested in the Department of Regulation and Licensing in ss. 227.11 (2) and 452.07, Stats., and interpreting ss. 452.01 (5m), 452.14 (3) (f), (g) and (j), and 452.19, Stats., the Department of Regulation and Licensing will hold a public hearing at the time and place indicated below to consider an order to amend s. RL 17.02 (3); and to create ss. RL 17.02 (2m), (3m), (5) and 17.12, relating to the employment of personal assistants by real estate salespersons and broker–employes.

### **Hearing Information**

**August 28, 1997**  
**Thursday**  
**10:15 a.m.**

**Rm. 180**  
**1400 E. Washington Ave.**  
**MADISON, WI**

### **Appearances at the Hearing**

Interested people are invited to present information at the hearing. People appearing may make an oral presentation, but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to:

Office of Administrative Rules  
Dept. of Regulation & Licensing  
P.O. Box 8935  
Madison, WI 53708

Written comments must be received by **September 12, 1997** to be included in the record of rule–making proceedings.

### **Analysis Prepared by the Dept. of Regulation & Licensing**

*Statutes authorizing promulgation:* ss. 227.11 (2) and 452.07

*Statutes interpreted:* ss. 452.01 (5m), 452.14 (3) (f), (g) and (j), and 452.19

This proposed rule–making order of the Department of Regulation and Licensing relates to the employment and use of personal assistants by licensed real estate salespersons and brokers who are themselves employed by real estate brokers. It is becoming increasingly common in this state, as well as nationally, for real estate salespersons and broker–employees of other real estate brokers to employ individuals to provide administrative, clerical or personal services to the salesperson or broker–employee. These services may include such tasks as answering the telephone, scheduling appointments and typing documents prepared by the licensee.

The proposed rules:

1) Formally recognize the practice of salespersons and broker–employees in employing individuals to assist the licensees in carrying out their responsibilities for their broker–employers;

2) Assure that broker–employers are informed that their salespersons or broker–employees have hired personal assistants; and

3) Protect the interests of the licensees, personal assistants and the public by requiring that (the following) will be set forth in writing:

A) The duties of the unlicensed personal assistant;

B) The manner in which the personal assistant will be compensated for his or her services; and

C) The responsibilities between the salesperson or broker–employee and broker–employer for supervision of the personal assistant’s activities.

The proposed rules also prohibit unlicensed personal assistants from conducting an open house for the sale of real estate or a business without being accompanied by a real estate licensee, as it is deemed nearly impossible for an individual to conduct an open house without engaging in negotiations with a prospective purchaser.

The proposed rules were submitted to the Real Estate Board for comment, as required under s. 452.07 (2), Stats. The Real Estate Board supports their promulgation.

### **Text of Rule**

**SECTION 1.** RL 17.02 (2m) is created to read:

RL 17.02 (2m) “Broker–employee” means a broker who is employed to provide services for another broker.

**SECTION 2.** RL 17.02 (3) is amended to read:

RL 17.02 (3) “Broker–employer” means a sole proprietor, a partnership or a corporation or business entity that employs another broker or salesperson to provide services to the broker.

**SECTION 3.** RL 17.02 (3m) and (5) are created to read:

RL 17.02 (3m) “Open house” means a showing of real estate open to the public for viewing without an individual appointment.

(5) “Unlicensed personal assistant” means a person not licensed, or licensed but not employed for the purpose of providing services for which a license is required under ch. 452, Stats., who on behalf and under the direction of a licensee, provides the licensee with administrative, clerical or personal services for which a license under ch. 452, Stats., is not required.

**SECTION 4.** RL 17.12 is created to read:

**RL 17.12 Unlicensed personal assistants.** (1) A real estate salesperson or broker–employee who intends to employ an unlicensed personal assistant shall enter into a written agreement with his or her broker–employer, setting forth the duties of the unlicensed personal assistant, the manner in which the personal assistant will be compensated for his or her services and the responsibilities between the salesperson or broker–employee and broker–employer for supervision of the personal assistant’s activities.

(2) An unlicensed personal assistant may not assist a licensee at an open house for the sale of real estate or a business without the direct, on–premises supervision and presence of a real estate licensee, and may not provide any services at an open house for which a license under ch. 452, Stats., is required.

**Note:** Individuals performing services for which a real estate license is required must be licensed and employed by a broker–employer, and not by a broker–employee or salesperson.

### **Fiscal Estimate**

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

### **Initial Regulatory Flexibility Analysis**

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

### **Copies of Rule and Contact Person**

Copies of this proposed rule are available without cost upon request to:

Pamela Haack, (608) 266–0495  
Office of Administrative Rules  
Dept. of Regulation & Licensing  
1400 East Washington Ave., Room 171  
P.O. Box 8935  
Madison, WI 53708

## **Notice of Proposed Rules**

### **Revenue**

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting ss. 77.51(4)(a) and (b) and (14)(intro.) and (j) and 77.54(3m) and (6)(b), Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **August 15, 1997**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule:

### **Contact Person**

Please contact Mark Wipperfurth at (608) 266–8253, if you have any questions regarding this proposed rule order.

### **Analysis by the Department of Revenue**

Statutory authority: s. 227.11(2)(a)

Statutes interpreted: ss. 77.51(4)(a) and (b) and (14)(intro.) and (j) and 77.54(3m) and (6)(b)

**SECTION 1.** Tax 11.15(1)(a) and (c)5. are amended to update language, punctuation and style per Legislative Council Rules Clearinghouse standards.

**SECTIONS 2 AND 3.** Tax 11.15(3) is repealed because it is duplicative. This same information is contained in Tax 11.12. A note is added to refer the reader to Tax 11.12 for information on the exemption that applies to containers used by farmers.

Accordingly, Tax 11.15(4), (5), (6), (7) and (8) are renumbered.

Tax 11.15(5), as renumbered, is amended to clarify that there is no provision in the sales and use tax law that states that an item sold or leased below cost may not be purchased without tax for resale.

### **Text of Rule**

**SECTION 1.** Tax 11.15(1)(a) and (c)5. are amended to read:



Tax 11.15(1)(a) To be exempt, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property shall be “used by the purchaser to transfer merchandise to customers.” Whether the containers or other packaging or shipping materials are returnable or nonreturnable is not a factor. The exemption shall does not apply to containers used in the incidental transfer of property to customers by persons providing services.

(c)5. “Fragile,” “Handle with Care” or other shipping labels.

Note to Revisor: Insert the following note at the end of sub. (1):

Note: See Tax 11.12 for information on farmer’s container exemption.

**SECTION 2.** Tax 11.15(3) is repealed.

**SECTION 3.** Tax 11.15(4), (5), (6), (7) and (8) are renumbered Tax 11.15(3), (4), (5), (6) and (7) and Tax 11.15(5), as renumbered, is amended to read:

Tax 11.15(5) DEMURRAGE, LEASE OR RENTAL OF FUEL STORAGE TANKS. A gas supplier’s monthly charge to a customer for the use of an LPG storage tank or other fuel storage tank which remains indefinitely on the customer’s premises is taxable. The charge a supplier makes because a gas cylinder is retained by a customer beyond a 30–day period is also taxable. These “demurrage” charges constitute taxable rentals paid for the continuation of possession of the container. If a reasonable charge is made to the customer for the use of the container and the container is used exclusively for such those leasing purposes, the gas supplier can may issue a resale certificate when such the supplier purchases the container. However, if the gas supplier furnishes a container or other storage tank to a customer without making a separately itemized charge for its use or charges only a nominal rental, the supplier shall be deemed the consumer of and shall pay tax on the acquisition of such the containers or tanks.

### **Initial Regulatory Flexibility Analysis**

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

### **Fiscal Estimate**

The rule order updates s. Tax 11.15 with respect to the department’s current position that hay and silage are grain for the purpose of the sale and use tax exemption from containers used to store grain. In addition, the rule order clarifies that silos purchased by contractors and subcontractors, and used in real property construction are subject to the sales and use tax, even though the silos may be used to store grain. The rule order also clarifies the Department’s position with respect to the resale of liquid propane gas and other fuel storage tanks. Other changes update language, punctuation and style to conform with Legislative Council Rules Clearinghouse standards.

These changes do not have a fiscal effect.

## **Notice of Hearing** *Transportation*

Notice is hereby given that pursuant to ss. 84.30(14) and 85.16(1), Stats., and interpreting s. 84.30, Stats., the Department of Transportation will hold a public hearing in **Room 951 of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the 19th day of September, 1997, at 10:00 AM**, to consider the repeal and recreation of s. Trans 201.15, Wisconsin Administrative Code, relating to erecting outdoor advertising signs whose messages may be changed by electronic process.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business **October 3, 1997**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such

comments should be submitted to Robert Hardie, Department of Transportation, Bureau of Highway Operations, Room 951, P. O. Box 7986, Madison, WI 53707–7986.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

### **Analysis Prepared by the Wisconsin Department of Transportation**

STATUTORY AUTHORITY: ss. 84.30(14), 85.16(1) and 227.10(1)

STATUTE INTERPRETED: s. 84.30

General Summary of Proposed Rule. This rule making proposes to repeal and recreate a section of the Department’s rule on the regulation of outdoor advertising under s. 84.30, Stats. Section Trans 201.15 authorizes and regulates the use of signs whose messages may be changed by electronic process. The current provision permits only those signs known in the outdoor advertising industry as variable message signs which use lamps or lighting to change messages.

Until recently, the United States Department of Transportation took the position that signs which changed messages through the use of moving triangular louvers were illegal under federal law. This type of sign is known in the outdoor advertising industry as a multiple message sign. In 1996, the Federal Highway Administration reversed its position and advised the states that this type of sign would be permissible if not prohibited by the individual federal–state agreements on size, spacing and lighting for off–premises advertising signs. The agreement between the State of Wisconsin and the United States Department of Transportation executed in 1972 does not prohibit signs with parts moved by electronic process to effect message changes.

The Wisconsin Department of Transportation received a request from the Wisconsin Outdoor Advertising Association to amend ch. Trans 201 to allow the erection of multiple message signs in Wisconsin subject to reasonable restrictions to protect public safety. The Department and the Association agreed that the speed with which the louvers rotate and the length of time that a message is displayed should be regulated. This proposed rule making will repeal and recreate s. Trans 201.15 to allow both variable message signs and multiple message signs. The louvers on multiple message signs will need to rotate in one second or less and will need to remain in a fixed position for six seconds or more. If there is litigation involving a multiple message sign, the louvers will be required to remain in a fixed position until a final decision is reached in the litigation.

### **Fiscal Estimate**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally–recognized American Indian tribes or bands. The Department also estimates no fiscal impact on state funds.

### **Initial Regulatory Flexibility Analysis**

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

### **Copies of Proposed Rule**

Copies of this proposed rule may be obtained upon request, without cost, by writing to Robert Hardie, Department of Transportation, Bureau of Highway Operations, Room 951, P. O. Box 7986, Madison, WI 53707–7986, or by calling (608) 266–3813. Alternate formats of the proposed rule will be provided to individuals at their request.

## **Notice of Hearings** *Transportation*

Notice is hereby given that pursuant to ss. 85.16(1) and 348.07(4), Stats., interpreting s. 348.07(4), Stats., the Department of Transportation will hold a public hearing at the following locations to

consider the amendment of chapter Trans 276, Wisconsin Administrative Code, relating to allowing the operation of double bottoms and certain other vehicles on certain specified highways.

**Hearing Information**

**September 3, 1997**  
**Wednesday**  
**2:00 p.m.**  
**Sawyer County Courthouse**  
**Assembly Room**  
**406 Main Street**  
**Hayward, WI**

**September 10, 1997**  
**Wednesday**  
**2:00 p.m.**  
**Transportation District Office**  
**Wisconsin Conference Room**  
**Hanson Road**  
**Rhineland, WI**

The hearing locations are accessible to persons with disabilities.

**Written Comments**

The public record on this proposed rule making will be held open until close of business, **September 15, 1997**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such written comments should be submitted to Mark Morrison, Traffic & Safety Engineer, Room 601, P. O. Box 7916, Madison, Wisconsin, 53707–7916.

**NOTE:** This hearing is being conducted at 2 locations in order to give the public greater opportunity to present its facts, arguments and opinions. The records from both locations will be combined into a single Hearing Record on which the Department will base its decisions. Individuals need only attend one of the public hearings for their testimony to be fully considered.

**Analysis Prepared by the Wisconsin Department of Transportation**

STATUTORY AUTHORITY: ss. 85.16(1) and 348.07(4)

STATUTE INTERPRETED: s. 348.07(4)

*General Summary of Proposed Rule.* This proposed rule amends s. Trans 276.07(8), (10), (13), (15), (16), (18) to (20) and (24), Wisconsin Administrative Code, to add thirteen segments of highway to the designated highway system established under s. 348.07(4), Stats. The actual highway segments that this proposed rule adds to the designated highway system are:

Highway	From	To
STH 35	STH 64 in Somerset	USH 8 in St. Croix Falls
STH 47	USH 8 in Rhineland	USH 51 in Woodruff
STH 48	STH 63 in Cumberland	USH 53 in Rice Lake
STH 64	STH 35 in Somerset	STH 65 in New Richmond
STH 64	STH 13 in Medford	USH 45 in Antigo
STH 70	STH 13 in Fifield	USH 2 in Florence
STH 77	USH 63 in Hayward	USH 51 in Hurley
STH 97	STH 29 S. of Athens	STH 64 E. of Medford
STH 107	STH 29 N. of Marathon City	STH 64 W. of Merrill
STH 111	USH 8 E. of Catawba	STH 13 S. of Phillips

STH 112	STH 13 N. of Marengo	USH 2 in Ashland
STH 118	USH 63 E. of Benoit	STH 112 S. of Ashland
STH 153	USH 51 in Mosinee	STH 107 E. of Halder

The proposed rule text often achieves these objectives by consolidating individual segments into contiguous segments with new end points. In order to determine the actual highway segment added, it is necessary to compare the combined old designations with the combined new designation.

The long trucks to which this proposed rule applies are those with 53-foot semitrailers, double bottoms and the vehicles which may legally operate on the federal National Network, but which exceed Wisconsin’s regular limits on overall length. Generally, no person may operate any of the following vehicles on Wisconsin’s highways without a permit: A single vehicle with an overall length in excess of 40 feet, a combination of vehicles with an overall length in excess of 65 feet, a semitrailer longer than 48 feet, an automobile haulaway longer than 66 feet plus allowed overhangs, or a double bottom. Certain exceptions are provided under s. 348.07(2), Stats., which implements provisions of the federal Surface Transportation Assistance Act in Wisconsin.

45-foot buses are allowed on the National Network and Interstate system by Federal law. Section 4006(b) of the Intermodal Surface Transportation Efficiency Act of 1991.

The effect of this proposed rule will be to extend the provisions of s. 348.07(2)(f), (fm), (gm) and (gr), and s. 348.08(1)(e), Stats., to the highway segments listed above. As a result, vehicles which may legally operate on the federal National Network in Wisconsin will also be allowed to operate on the newly-designated highways. Specifically, this means there will be no overall length limitation for a tractor–semitrailer combination, a double bottom or an automobile haulaway on the affected highway segments. There also will be no length limitation for a truck tractor or road tractor when operated in a tractor–semitrailer combination or as part of a double bottom or an automobile haulaway. Double bottoms will be allowed to operate on the affected highway segments provided neither trailer is longer than 28 feet, 6 inches. Semitrailers up to 53 feet long may also be operated on these highway segments provided the kingpin to rear axle distance does not exceed 43 feet. This distance is measured from the kingpin to the center of the rear axle or, if the semitrailer has a tandem axle, to a point midway between the first and last axles of the tandem. Otherwise, semitrailers, including semitrailers which are part of an automobile haulaway, are limited to 48 feet in length.

These vehicles and combinations are also allowed to operate on undesignated highways for a distance of 5 miles or less from the designated highway in order to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly or points of loading or unloading.

**Fiscal Impact**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally-recognized tribes or bands.

**Initial Regulatory Flexibility Analysis**

The provisions of this proposed rule adding highway segments to the designated system have no direct adverse effect on small businesses, and may have a favorable effect on those small businesses which are shippers or carriers using the newly-designated routes.

**Copies of Rule and Contact Person**

Copies of this proposed rule are available upon request, without cost, at the office of the State Traffic Engineer, P. O. Box 7916, Madison, Wisconsin, 53707, telephone (608) 266–1675. For questions about this proposed rule making, please call Mark Morrison, Traffic & Safety Engineer at (608) 266–1675. Alternate

formats of the proposed rule will be provided to individuals at their request.

## **Notice of Hearing**

### ***Transportation***

Notice is hereby given that pursuant to s. 110.06(2), Stats., interpreting s. 110.06(2), Stats., the Department of Transportation will hold a public hearing on **Tuesday, August 26, 1997 at the Hill Farms State Transportation Building, Room 551, 4802 Sheboygan Avenue, Madison, WI, at 9:00 AM**, to consider the emergency rule and proposed permanent rules amendment of ch. Trans 300, Wis. Adm. Code, relating to the transportation of school children.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed permanent rule making will be held open until close of business **Friday, August 29, 1997**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Sgt. Sandra Huxtable, Department of Transportation, Division of State Patrol, Room 51, P.O. 7912, Madison, WI 53707–7912.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

### **Analysis Prepared by the Wisconsin Department of Transportation**

STATUTORY AUTHORITY: s. 110.06(2)

STATUTE INTERPRETED: s. 110.06(2)

*General Summary of Emergency Rule and Proposed Permanent Rule.* Chapter Trans 300 regulates the transportation of school

children in Wisconsin. Currently, this chapter has specific requirements for the thickness of metal used in the school bus manufacturing process, specifically, construction of the floor and rub rails. The Department proposes to allow alternative school bus construction material. To keep the gross vehicle weight rating (GVWR) at or below 10,000 lbs., the revision would allow “other metal or material with strength at least equivalent to all–steel as certified by the bus body manufacturer.” Without the proposed changes for the 10,000 lb. GVWR or less school buses, schools will start using alternative vehicles (production vans) because of the unavailability of the smaller school buses built to the safer school bus standards.

Other revisions include numerous corrections to this chapter in the interests of proper drafting format and style.

### **Fiscal Impact**

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally–recognized tribes or bands. The amendments to this rule will allow bus operators to purchase the smaller school buses needed for the full school year. There will be no cost increase to the Department to inspect these buses.

### **Initial Regulatory Flexibility Analysis**

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

### **Copies of Emergency Rule & Proposed Permanent Rule & Contact Person**

Copies of this emergency rule and proposed permanent rule are available without cost upon request by writing to Frieda Andreas, Division of State Patrol, P. O. Box 7912, Room 551, Madison, WI 53712, or by calling (608) 266–6936. Alternate formats of the proposed rule will be provided to individuals at their request.

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*NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF  
EACH HOUSE OF THE LEGISLATURE, UNDER S. 227.19, STATS.*

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

**Accounting Examining Board (CR 97–70):**

S. Accy 7.035 – Relating to the education required of candidates to take the examination leading to receipt of a credential as a certified public accountant (CPA) after December 31, 2000.

**Chiropractic Examining Board (CR 95–59):**

SS. Chir 6.015 and 6.02 – Relating to advertising.

**Chiropractic Examining Board (CR 97–65):**

SS. Chir 5.01, 5.02 and 5.03 – Relating to continuing education requirements and approval of continuing education programs for chiropractors.

**Dietitians Affiliated Credentialing Board (CR 97–61):**

SS. DI 2.01, 2.02, 2.03, 2.04, 3.01 and 4.01 – Relating to certification of dietitians.

**Employe Trust Funds (CR 97–72):**

S. ETF 20.02 – Relating to rehired annuitants.

**Natural Resources (CR 97–59):**

SS. NR 46.16, 46.18, 46.24 and 46.30 – Relating to the administration of the Forest Crop Law and the Managed Forest Law.

**Public Instruction (CR 97–81):**

Chs. PI 3 and 4 and s. PI 8.01 – Relating to teacher certification requirements, certification program requirements, and Standard (L).

**Regulation & Licensing (CR 97–48):**

Chs. RL 30 to 35 – Relating to credentialing requirements and procedures for private detective agencies, private detectives and private security persons.

**Transportation (CR 97–6):**

Ch. Trans 253 and ss. Trans 255.06, 259.02 and 259.04 – Relating to overweight permits.

**Transportation (CR 97–60):**

SS. Trans 206.02 and 206.03 – Relating to the local roads improvement program.

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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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*The following administrative rules have been filed with the Revisor of Statutes 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 of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.*

**Corrections (CR 96-176):**

An order affecting ch. DOC 324, relating to the inmate work and study release program.  
Effective 10-01-97.

**Insurance, Commissioner of (CR 97-9):**

An order creating s. Ins 2.17, relating to life insurance illustrations.  
Effective 01-01-98.

**Nursing Home Administrator Examining Board (CR 97-42):**

An order affecting chs. NHA 1 to 6, relating to the licensure of nursing home administrators.  
Effective 10-01-97.

**Optometry Examining Board (CR 97-22):**

An order affecting chs. Opt 1, 3, 4, 5, 6 and 7, relating to applications, examinations and continuing education requirements, and to standards of professional conduct of optometrists.  
Effective 10-01-97.

**Regulation & Licensing (CR 97-25):**

An order affecting chs. RL 100, 101, 102, 103, 104, 105, 110, 111, 112, 113, 114, 115 and 116, relating to amateur and professional boxing.  
Effective 10-01-97.

**Transportation (CR 97-63):**

An order amending s. Trans 276.07 (8), (11), (16) and (17), relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.  
Effective 10-01-97.

**Workforce Development (CR 97-23):**

An order renumbering subch. VII of ch. HSS 55 and creating s. DWD 56.08, relating to the administration of child care funds and required parent copayments.  
Effective 10-01-97.

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*C O R R E C T I O N*

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A rule published in the July 31, 1997 Wisconsin Administrative Register and listed in the Rules Published In This Wisconsin Administrative Register section had an incorrect effective date. The correct listing should read:

**Insurance** (CR 96–182)

An order creating ch. Ins 23, relating to minimum standards for life insurance policies sold to fund prearranged funeral plans.

Effective 10–1–97.

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