

STATEMENT OF SCOPE

Department of Corrections

Rule No.: Chapter DOC 309

Relating to: Segregated account funds.

Rule Type: Both Permanent and Emergency Rule

1. Finding/nature of emergency (Emergency Rule only):

The Department of Corrections (DOC) seeks to promulgate an emergency and permanent rule to amend Wis. Admin. Code Chapter DOC 309 pertaining to educational funds such as grant and possibly scholarship funds received by inmates who are in educational programs for which they receive educational credit from accredited institutions, such as MATC Milwaukee (MATC) and Madison College (MC).

Within the next few weeks, MC will be providing a \$750 grant (from Higher Education Emergency Relief Fund (HEERF) monies) to each inmate student who was Pell grant eligible, and is providing a \$500 grant (also from HEERF funding) to each inmate student who was ineligible for Pell grants. An emergency rule is necessary to ensure that to the extent that these “no strings” federal grants are not used by inmates for current educational purposes, they will be used to promote the welfare of inmates by being applied toward future educational purposes, and to the extent not used toward future educational purposes, only be used for purposes that will aid the inmate’s reintegration into the community and with the avoidance of recidivism.

Madison College (MC) currently has 20 DOC inmate students who will be receiving HEERF funds from MC. DOC’s MC inmate students may expand to 60 in the Fall 2021 semester and 100 in the Spring 2022 semester. If further HEERF funding is appropriated, MC inmate students will receive it also.

MATC Milwaukee (MATC) had 200 inmate students. This may expand to 230 in the Fall of 2021 and to 300 in the Spring of 2022. MATC has not yet decided as to whether to, or how much to, provide to inmate students from HEERF funds.

The current rule governing grant and other educational funds received by inmate students only allows DOC to oversee funds for inmates who are enrolled in a program paid for by the DOC. Therefore, the current Wis. Admin. Code § DOC 309.50(3) will not permit DOC to oversee and administer the HEERF funds (and potentially other education-related funds such as scholarship funds).

2. Detailed description of the objective of the proposed rule:

The objective of the emergency and permanent rule is to amend Wis. Admin. Code Chapter DOC 309 to ensure that grant (and scholarship) funds received by inmates are used for educational purposes and that to the extent that any excess funds might not be used for educational purposes, these funds are segregated and treated similarly to release account funds under Wis. Admin. Code §§ DOC 309.466 and DOC 309.49. DOC seeks permission to apply these funds, to the extent that they may not be needed for education, to assist with releasing inmates' reintegration into the community and avoidance of recidivism through revisions to Wis. Admin. Code Chapter DOC 309, including likely revisions to Wis. Admin. Code § DOC 309.50.

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

Under the current rule, DOC shall segregate educational funds such as scholarship and grants **only** when they are received by inmates whose tuition has been paid for by DOC. If grant or scholarship funds are received by inmates whose tuition is not being paid for by DOC (i.e. inmates whose tuition is being paid for by Pell grants), these grant and scholarship funds cannot be segregated and instead will be placed in the inmate's general account after regular deductions such as for restitution and surcharges are taken.

DOC seeks to ensure that all education-related funds received by all inmates enrolled in higher educational programs are segregated and used first for educational purposes, including potentially for future tuition not fully covered by Pell or other grants, and following that to foster a successful reentry.

Due to existing administrative rules regarding the disbursement, segregation, and use of inmate funds, there are no other alternative means to address the need for revisions as discussed above.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 227.11 (2): Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or non-statutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.

3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

(b) Each agency may prescribe forms and procedures in connection with any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure.

(c) Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

(d) An agency may promulgate rules implementing or interpreting a statute that it will enforce or administer after publication of the statute but prior to the statute's effective date. A rule promulgated under this paragraph may not take effect prior to the effective date of the statute that it implements or interprets.

(e) An agency may not inform a member of the public in writing that a rule is or will be in effect unless the rule has been filed under s. 227.20 or unless the member of the public requests that information.

Section 301.02: The department shall maintain and govern the state correctional institutions.

Section 301.03 (2): Supervise the custody and discipline of all prisoners and the maintenance of state correctional institutions and the prison industries under s. 303.01.

Section 301.32 (1) All money and other property delivered to an employee of any state correctional institution for the benefit of a prisoner or resident shall be delivered to the warden or superintendent, who shall enter the property upon his or her accounts to the credit of the prisoner or resident. The property may be used only under the direction and with the approval of the superintendent or warden and for the crime victim and witness assistance surcharge under s. 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the child pornography surcharge under s. 973.042, the drug offender diversion surcharge under s. 973.043, victim restitution under s. 973.20 (11) (c), or the benefit of the prisoner or resident.

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

The Department estimates that it will take approximately 50 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

6. List with description of all entities that may be affected by the proposed rule:

This rule will affect inmates who are enrolled in educational programs, and business office staff.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no federal regulations which address the management and use of HEERF II and III funds received by state inmates.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The department anticipates that the proposed rule will have minimal to no economic impact statewide or locally.

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