

**STATEMENT OF SCOPE
DEPARTMENT OF CORRECTIONS**

Rule Number: Chapter DOC 309

Relating to: Resources for Inmates; Inmate Mail

Rule Type: Permanent

1. DETAILED DESCRIPTION OF THE OBJECTIVE OF THE PROPOSED RULE.

The objective of this rulemaking is to review the provisions related to incoming mail for persons in the Department's care in state correctional facilities and to update these provisions accordingly to reflect changes in operations and practices of the Department.

2. DESCRIPTION OF EXISTING POLICIES AND NEW POLICIES INCLUDED IN PROPOSED RULE AND AN ANALYSIS OF POLICY ALTERNATIVES.

The Department is responsible for governing state correctional institutions and for supervising the custody of all persons in the Department's care in the state correctional institutions. As part of that responsibility, the Department may allow communication with families, friends, government officials, courts, and other people concerned with the welfare of persons in the Department's care consistent with the need to protect the public. Currently, a person in the Department's care is required to consent in writing to receive mail through institution mail services. There is a need to update this requirement to reflect changes in policy and procedures regarding incoming mail for persons in the Department's care.

Additionally, the Department is currently required to permit persons in the Department's care to correspond with anyone via mail. There is a need to update this requirement to allow the Department to restrict mail correspondence when there are no contact rules between a victim and a person in the Department's care. Lastly, institution staff are prohibited from opening or reading mail sent by a person in the Department's care to certain parties unless the security director has reason to believe that the mail contains contraband and may open mail received from the same parties in the presence of a person in the Department's care. There is a need to update the parties that this requirement applies to, in order to prevent contraband from entering an institution.

The alternative to this proposed rulemaking is not amending the provisions of this rule which would result in the Department having outdated policies that put the safety and security of persons in the Department's care, staff, the community and victims at risk of serious harm and a rule which needs reform.

3. STATUTORY AUTHORITY.

Section 227.11 (2) (a) – (c): Rule –making authority is expressly conferred 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 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.

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.

4. ESTIMATE OF AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OTHER RESOURCES NECESSARY TO DEVELOP THE RULE.

The Department estimates that it will take approximately 20 hours to develop this rule, including drafting the rule and complying with rulemaking requirements.

5. LIST WITH DESCRIPTION OF ALL ENTITIES THAT MAY BE AFFECTED BY THE PROPOSED RULE.

Rule revisions will primarily affect persons in state correctional institutions, family, friends and others communicating with persons in state correctional institutions via mail and DOC staff.

6. 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 that are intended to address the activities regulated by the proposed rule.

7. ANTICIPATED ECONOMIC IMPACT OF IMPLEMENTING THE RULE. NOTE IF THE RULE IS LIKELY TO HAVE AN ECONOMIC IMPACT ON SMALL BUSINESSES.

Rule changes will likely have a positive economic impact on DOC staff time and resources. The rule changes will decrease the burden on parties responding to DOC as they attempt to verify the legitimacy of the mail before distribution. The rule changes will likely have a positive impact on courts and law firms as less verification of sender information will need to be done.

CONTACT PERSON:

Caitlin Washburn, Office of Legal Counsel, Wisconsin Department of Corrections, 3099 East Washington Ave, P.O. Box 7925, Madison, WI 53707-7925, (608) 240-5020,
DOCAdministrativeRulesCommittee@wisconsin.gov.