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CERTIFICATE

STATE OF WISCONSIN)
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DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

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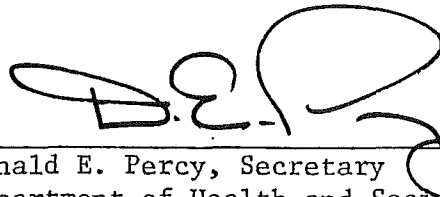
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department, do hereby certify that the annexed rules relating to industries in adult correctional institutions were duly approved and adopted by this department on May 6, 1982.

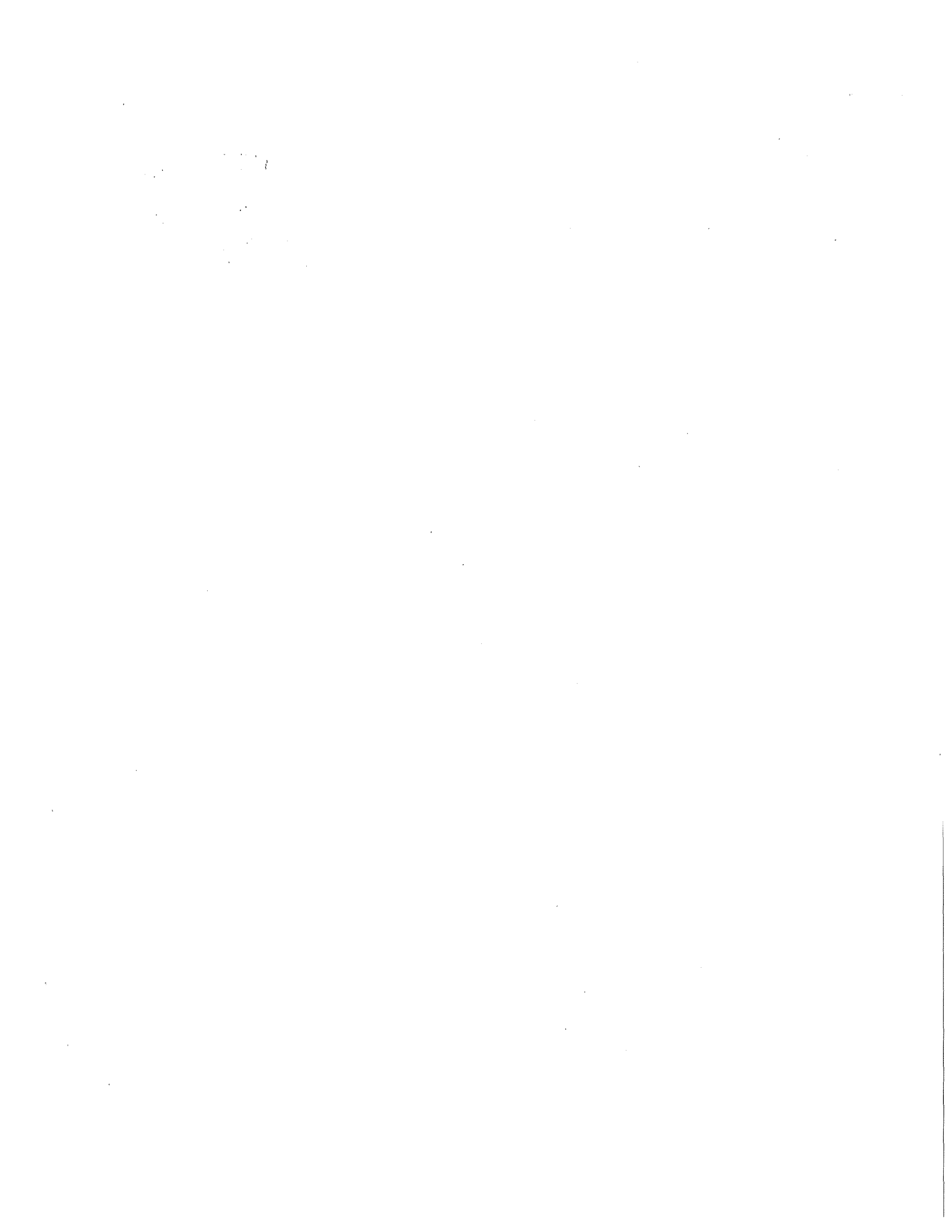
I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 6th day of May, A.D. 1982.

SEAL:



Donald E. Percy, Secretary
Department of Health and Social Services



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ORDER OF THE DEPARTMENT
OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

Relating to a rule concerning industries in adult correctional institutions.

Analysis prepared by the Department of Health and Social Services:

This rule provides the means by which Wisconsin Corrections Industries can provide a worthwhile employment experience for inmates in adult correctional institutions while maintaining self-supporting operations through the sale of useful products and services. The rule allows for the development by the inmate of work skills and habits necessary to compete in the job market after release. The Industries utilize modern production methods and business practices similar to those used in private industry.

To encourage the development of job skills, the inmate is paid wages based on work productivity. The rules delineates the methods by which inmates are selected, trained, evaluated, compensated, retained, promoted and terminated.

Pursuant to the authority vested in the Department of Health and Social Services by ss. 46.03(6) and 227.014(2), Stats., the Department hereby adopts rules interpreting ss. 53.09, 56.01, 56.03, 56.06, and 56.21, Stats., as follows:

SECTION 1. Chapter HSS 313 of the Wisconsin Administrative Code is adopted to read:

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DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF CORRECTIONS

ADMINISTRATIVE RULES

HSS 313

Corrections Industries in
Adult Institutions

April, 1982

HSS 313

Corrections Industries in
Adult Institutions

HSS 313.01	Purpose
HSS 313.015	Applicability
HSS 313.02	Description of Industries
HSS 313.025	Authority of Program Review Committee
HSS 313.03	Application and Approval
HSS 313.04	Probationary Period
HSS 313.05	Evaluation
HSS 313.06	Termination
HSS 313.07	Discipline
HSS 313.08	Compensation in Industry Shops
HSS 313.09	Work Day
HSS 313.10	Placement Priority Upon Transfer
HSS 313.11	Inmate Management Advisory Committee
HSS 313.12	Affirmative Action
HSS 313.13	Total Shop Shutdown and Layoff

HSS 313.01 PURPOSE

The purposes of Wisconsin corrections industries are to assist in reintegration of inmates into their communities by providing meaningful employment opportunities within correctional institutions and to maintain self-supporting industries through the sale of products and services. The following goals are relevant to the fulfillment of these purposes:

- (1) To provide the inmate with work skills, habits, and training necessary to compete in the modern job marketplace, thereby increasing the potential for a successful return to society;
- (2) To develop programs that reinforce individual dignity and meet the needs of the individual inmate employee;
- (3) To utilize modern production methods and business practices similar to those used by private industry;
- (4) To develop, produce, and market products of benefit to customers at a competitive price;
- (5) To sell to customers products and services unavailable to them through alternative sources; and
- (6) To pay inmate employees a wage based upon work productivity.

NOTE: The purpose of corrections industries is twofold: 1) to provide a beneficial experience for the inmate and 2) to maintain self-supporting industries. These two elements are related since efficient and modern management of industries results in meaningful real-life working conditions that lead to marketable skills for the inmate upon release. Operating corrections industries on a business-like basis provides inmates with opportunities to use existing skills, to upgrade their skills, and to learn new skills.

Historically, work in prisons served a variety of purposes that conflicted with each other. The National Advisory Commission on Criminal Justice Standards and Goals said the following about the historical role of work in institutions.

"Its functions have been to punish and keep the committed offender busy, to promote discipline, to maintain the institution, to defray some operating costs of the prison, and to provide training and wages for the offender. To accomplish any one function, it has been necessary to sacrifice one or more of the others. Unfortunately, the job training function has not had the highest priority." National Advisory Commission on Criminal Justice Standards and Goals, Corrections (1973), p. 387.

Wisconsin corrections industries departs from the historical model by making reintegration its purpose.

For discussion on prison industries, see: National Advisory Commission on Criminal Justice Standards and Goals, Corrections (1973), pp. 387-388; and American Bar Association, Tentative Draft of Standards Relating to the Legal Status of Prisoners (1977), pp. 458-465.

HSS 313.015 APPLICABILITY

- (1) This chapter is created under the authority of s.227.014, Stats., and implements ss.53.09, 56.01, 56.03, 56.06, and 56.21, Stats.
- (2) The definitions in Chs. HSS 302, 303 and 310, Wis. Adm. Code, apply to this chapter.

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HSS 313.02 DESCRIPTION OF INDUSTRIES

Wisconsin corrections industries shall keep a written description of all its operations including but not limited to job positions, job titles, job descriptions, pay scales, probationary term, work hours, and specific work rules. This description shall be available to inmates and the public. The description of industries shall be updated to reflect change.

NOTE: This section requires industries to keep a written description of its operations. The description should fully explain the entire operation so inmates and staff can use the document to evaluate the various job positions available with reference to the particular needs of both the inmate and the program.

HSS 313.025 AUTHORITY OF PROGRAM REVIEW COMMITTEE (PRC)

The program review committee (PRC) has authority over an inmate's program assignment, and this authority applies to this chapter. Sections HSS 302.18 to 302.20, Wis. Adm. Code, govern PRC criteria and procedures.

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HSS 313.03 PROCEDURE FOR APPLICATION AND APPROVAL

- (1) Any inmate may apply for a position in industries. The application shall include the inmate's preferences for positions.

- (2) The shop supervisor shall:
 - (a) Interview applicants for specific positions under his or her supervision. If an opening occurs, the shop supervisor may select any inmate applicant for the position and recommend that the program review committee (PRC) approve the inmate for the specific program assignment.

 - (b) Use only the following criteria in the selection of applicants:
 1. Attitude;
 2. Willingness to learn;
 3. Experience and training;
 4. Physical ability if relevant to the position;
 5. Unique skills applicable to the particular position;
 6. Past employment in the industries program; and
 7. Medical history.

- (3) The program review committee (PRC), using the procedure and criteria of ch. HSS 302, Wis. Adm. Code, shall make the decision to approve or deny the specific program assignment.

NOTE: Due to the popularity of the industries program, there is usually a waiting list of applicants for positions. When vacancies occur, the shop supervisor contacts the desired applicant and, if the applicant is still interested, hires that inmate subject to program review committee (PRC) approval.

Since industries creates an employer-employee relationship, the shop supervisor is given the power to recommend the person believed to be best suited for the job. PRC approval is also necessary for the specific program assignment, but no inmate can be assigned to a specific job without first being recommended and tentatively hired by the shop supervisor.

Generally, very few inmates have training for the jobs for which they apply. Selection does not usually depend upon the level of specific skill accomplishment an inmate has since developing new work skills, habits, and training is a goal of the program under HSS 313.01(1). Attitude, willingness to learn, physical strength or dexterity, and medical history are likely to be more important than prior experience. Of course, prior experience may weigh heavily if the supervisor needs to fill a position quickly that is crucial to maintain efficient operations.

HSS 313.04 PROBATIONARY PERIOD

- (1) Every inmate hired for a new position by Wisconsin corrections industries shall serve a probationary period during which the inmate's employment may be terminated by the inmate or the supervisor. If terminated by the supervisor, an inmate may appeal through the inmate complaint review system (ICRS) under ch. HSS 310, Wis. Adm. Code.
- (2) Inmates beginning their first appointment for industries shall not receive sick leave or bonus pay under s. HSS 313.08(4) and (6) during the probationary period.
- (3) The duration of the probationary term for any position shall be established prior to interviewing any inmate.

NOTE: The probationary period provides an opportunity for the inmate to see if the job suits him or her and for the supervisor to evaluate the inmate's capability in the job. Sometimes an inmate is not right for the job, and the probationary period permits a change to be made, at the request of the inmate, the supervisor, or both, without the counseling sessions required under HSS 313.06. If the inmate is aggrieved by the decision, he or she may appeal under the inmate complaint review system (ICRS).

Subsection (2) prohibits sick leave pay and bonus pay for inmates during probation, as do many private and public employment contracts. It was adopted

here because it provides incentive for inmates to earn the benefits. Since benefits are taken from the entire industries revenue generated by all employees, inmates are eligible to receive the benefits only after they have made a contribution to the program and are likely to continue to do so. After the probationary period is finished, the likelihood of continued stable employment is increased, and the inmate is entitled to share in benefits generated through the labor of all the employees in the industries program.

Subsection (3) requires the length of the probationary period to be established prior to interviewing any inmate. This prevents the period being adjusted for a particular inmate. The term is intended to relate to the position. The probationary term for any job must be written in the description of industries under HSS 313.02.

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HSS 313.05 EVALUATION

- (1) Each employee's performance shall be evaluated at least once a month by the supervisor. The evaluation shall be written and shall include underlying facts supporting conclusions based upon the criteria of sub. (2).
- (2) The criteria to be used in evaluating employees include, but are not limited to, the following:
 - (a) Quality of performance of assigned duties;
 - (b) Observation of safety regulations;
 - (c) Initiative;
 - (d) Attendance;
 - (e) Sanitation;
 - (f) Attitude towards fellow employees and staff; and
 - (g) Improvement.
- (3) The shop supervisor shall meet with the employee during the evaluation to discuss the employee's performance.
- (4) Copies of the employee evaluation report shall be distributed to the inmate, the industries executive management, the supervisor, and the social services staff.

- (5) A recommendation concerning extra good time shall be included in the evaluation. The criteria for an extra good time recommendation shall be those under s. HSS 302.27(3) to (6), Wis. Adm. Code.

NOTE: The monthly evaluation provides feedback to the employee on a regular basis concerning overall performance. The shop supervisor's discussion with the employee can be beneficial to both the supervisor and the employee as a means of maintaining a productive work environment. The supervisor can tell the employee that the work is satisfactory or, if not, can offer suggestions about how to improve.

The discussions and written evaluation enable the industries to work toward the goals under HSS 313.01 of improving inmate work skills, meeting the needs of individual inmates, paying a wage based upon productivity, and running a productive industry. Wage increases are based upon productivity as reflected in the evaluation. (See: HSS 313.08, employee compensation in industry shops.) The inmate, therefore, has an incentive toward positive behavior resulting in a favorable evaluation. This section conforms to the American Correctional Association's Manual of Standards for Adult Correctional Institutions (1977) standard 4391 and to s. 56.01(4), Stats.

The written evaluation, using an established set of criteria together with underlying facts, is of critical importance if the supervisor terminates the inmate under HSS 313.06. It also provides the inmate with a written record of positive program participation for later consideration by the PRC and the parole board.

HSS 313.06 TERMINATION

(1) After an inmate employee has completed the probationary period, he or she may be terminated under this section. The types of termination are as follows:

(a) Voluntary. An inmate may voluntarily terminate his or her employment with Wisconsin corrections industries.

(b) Serious work rule violations. Serious violations of the administrative rules of the division or specific work rules of the position may be cause for immediate discharge. These include, but are not limited to:

1. Direct insubordination (such as refusal to work);
2. Serious disregard of safety regulations; and
3. Walking off the job.

(c) Substandard performance. If an employee's performance is consistently substandard under s. HSS 313.05, the following procedure shall be used for termination:

1. A supervisor dissatisfied with an employee's performance shall hold at least 2 counseling sessions with the employee during which the supervisor explains the problem and the supervisor and the employee attempt to find a solution to the problem.

2. Following 2 counseling sessions, the supervisor may retain the employee or, if no satisfactory solution is found, may terminate the employee.

3. A record of the counseling session shall be made in a log of all counseling sessions.

(d) Transfer. An employee shall be terminated upon transfer to another institution. If an industries facility is operating at the new institution, the employee may be given priority consideration for rehiring under s. HSS 313.10.

(2) Whenever an employee is terminated, the supervisor shall write the decision and facts applicable to the criteria of s. HSS 313.05(2). This record shall include, but is not limited to, the following information:

- (a) Name of employee terminated;
- (b) Date of termination;
- (c) Shop name;
- (d) Supervisor's name; and
- (e) Reasons for termination including underlying facts and criteria used for decision.

- (3) If an employee is terminated under this section, referral shall be made to the program review committee (PRC) for review under ch. HSS 302, Wis. Adm. Code.

NOTE: HSS 313.06 gives the shop supervisor the authority to terminate employees who are not satisfactory. If the cause for termination is not a serious one requiring immediate action as described in HSS 313.06(1)(b), the supervisor must first attempt to counsel the employee.

The counseling sessions are to be discussions during which the inmate and the supervisor exchange ideas about how to improve performance. Such discussions may reveal that minor adjustments are possible, and the employee will be retained. The discussions may also reveal that, in the supervisor's view, the employee is unsuited for the position, and the employee may, therefore, be terminated after 2 sessions.

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HSS 313.07 DISCIPLINE

A finding of guilt in a disciplinary process under Ch. HSS 303, Wis. Adm. Code shall not result in automatic termination from employment, but if the conduct underlying the disciplinary violation relates to job performance, it may be considered along with the criteria under s. HSS 313.05 in any decision to terminate.

NOTE: Disciplinary action by itself has no direct relevance to employment under this chapter. However, the underlying conduct of the employee is relevant if it affects job performance as evaluated using the criteria of HSS 313.05(2). For example, an inmate who is disciplined for conduct elsewhere in the institution could not be terminated merely because the inmate was found guilty at a disciplinary proceeding. However, if the inmate is placed in segregation the resulting poor attendance at work (See HSS 313.05(2)(d)) may be cause for termination under HSS 313.06(1)(c).

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HSS 313.08 EMPLOYEE COMPENSATION IN INDUSTRY SHOPS

- (1) Each employee shall be paid a base wage established by industries management. Upward pay adjustments may be made at the recommendation of the shop supervisor based upon the monthly employee evaluation report.
- (2) Overtime pay at the rate of one and one-half times the base wage shall be given to employees for hours worked exceeding 8 hours per day during the regular work week. Twice the base wage rate shall be paid for work on Sundays and state holidays.
- (3) Employees assigned to the second shift may be paid a differential amount per hour in addition to the base wage they receive.
- (4)
 - (a) Employees who have completed the probationary period shall be eligible for 20 days of sick leave per year for nonwork-related illness. Sick leave pay shall be an amount equal to the entry-level wage rate for hours missed.
 - (b) An employee who wishes to claim sick leave must obtain permission from appropriate staff.
- (5) Employees shall be paid one-half their base pay if the shop is temporarily closed so that inmates are unable to work. This subsection applies only when the shop is closed for reasons unrelated to actions of employees.

- (6) A bonus based upon revenues of Wisconsin corrections industries may be paid to all employees.
- (7) Employees injured in the performance of their job duties shall receive full pay while recuperating. An inmate may file a claim with the worker's compensation division of the Wisconsin department of industry, labor, and human relations if the injury is of sufficient severity to affect earning capacity following release.
- (8) Employees of the division's contract work experience program may be paid piece-rate wages.
- (9) An employee who has been charged with violation of a disciplinary rule and found not guilty shall be paid for all hours absent from work due to the disciplinary proceedings. If the employee is found guilty, he or she shall receive no pay for hours absent due to the proceedings.
- (10) During the month following completion of the probationary period, employees shall receive an hourly wage increase equal to a minimum of ten percent of maximum base rate rounded to the nearest five cents.
- (11) Nonmonetary or monetary awards may be established by management. Any awards shall be based upon a written plan established by management.

NOTE: Section 56.01(4), Stats., requires wages to be based upon productivity. For several reasons the wages paid to inmates are not equal to wages paid for similar employment in the private sector. First, an inmate in an institution

does not pay for room and board, but an employee in the private sector pays a major portion of his wages for these items. If the amount paid for room and board is added to inmate's wages, their real income is much higher.

Second, training of employees is ongoing, many inmates are not skilled when they begin work and they do not stay on a job for as long as workers in the private sector due to transfers or other reasons. The cost of training inmates for a relatively short period of employment decreases the resources available for wages.

A third reason wages are lower than private industry is that s.56.06, Stats., prohibits products, except farm machinery, farm implements and tools, cordage rope and plyoods, and binder twine, manufactured in a penal institution from being offered for sale in the open market. This statute prevents corrections industries from entering more profitable markets, thereby limiting the resources available for wages.

Fourth, the costs of security are higher for a correctional population than for private industry.

Finally, under s.56.01(4), Stats., the wages may not be set at a rate that would cause a deficit in operations. This restriction relates to all the previous points since the higher costs of training and security, the limitation on competition with private industry, and the low profit items manufactured result in fewer resources for wages.

The fringe benefits provided by this section relating to overtime, second shift, sick leave, bonuses, and employment related injuries are considered an important part of inmate work programs by the American Correctional Association, Manual of Standards for Adult Correctional Institutions (1977), standard 4391. Most other commentators also recognize the significance of benefits being parallel to the private working world.

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HSS 313.09 WORK DAY

- (1) The regular work days for industries positions shall be not less than 6 nor more than 8 hours excluding overtime.
- (2) Employees shall be paid for all time for which they work.
- (3) An employee shall obtain a pass before leaving the shop during work hours. Passes to leave the shop are discouraged except when necessary for programming or when an emergency exists.

NOTE: This section sets the maximum and minimum number of hours of the regular work day for any job position in industries. Subsection (1) does not prevent an employee from working longer than eight hours or the time established as regular working hours for the position if the supervisor desires it. However, the inmate working more than the number of hours set for the work day will receive overtime pay.

Subsection (3) was adopted so employee work days will not be continually interrupted. This subsection is in line with the purposes of HSS 313.01. If an industries program is to be beneficial, it should closely approximate private sector working experience. Numerous absences are not tolerated in the private sector, and subsection (3) sets the same policy for corrections industries. Passes for things that could be done at other times should not be given.

This section substantially conforms to the American Correctional Association's Manual of Standards for Adult Correctional Institutions (1977), standards 4387, 4388, and 4390.

HSS 313.10 FORMER EMPLOYEES' PRIORITY UPON TRANSFER

- (1) Employees who are transferred to another institution for other than discipline and population pressure reasons may be given a priority consideration over applicants who have never worked for Wisconsin corrections industries. See s. HSS 313.03(2)(b).

- (2) An inmate who has been transferred and hired at the new institution may be given his or her previous rate of pay if the inmate is as competent as the other workers in the new shop.

NOTE: This section was established for two reasons: first, so industries can continue a relationship with employees with a good working record, and second, to discourage inmates from resisting transfers for monetary reasons.

Inmates who are transferred lose the jobs they have at the institution from which they are transferred. The decision to transfer an inmate is made by the program review committee (PRC) as are all other programming decisions.

Subsection (1) allows a policy of preference for applicants who have previous experience with industries. Subsection (2) permits an inmate who is transferred to begin employment at the same wage as the one he or she left. This section provides incentive for inmates to cooperate with and seek program changes that will benefit them.

HSS 313.11 INMATE MANAGEMENT ADVISORY COMMITTEES

- (1) Wisconsin corrections industries may establish inmate advisory committees consisting of inmates from the various shops.
- (2) Inmate advisory committees may discuss topics related to industry operations. Inmate advisory committees are encouraged to formulate their own agendas for discussion.
- (3) Regular meetings are encouraged between inmate advisory committees and the executive management staff of industries or their representatives.
- (4) An inmate advisory committee is not a labor union. Inmate labor unions are prohibited.

NOTE: Inmate advisory committees are presently part of the industries program in Wisconsin. These committees are valuable for both inmate employees and staff. They have led to more informed management decisions benefiting the inmates and the program. The operation of these committees is beneficial in training inmates for work upon release to the community, and inmates develop a sense of responsibility about their work when they know they can participate in decisions.

Subsection (4) specifically prohibits unionization by inmates. However, the advisory committees become involved in many of the same issues that labor unions do relating to the workplace. The past willingness of high level management staff in industries to meet on a monthly basis with committees demonstrates the important contribution the committees make to Wisconsin corrections industries.

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HSS 313.12 AFFIRMATIVE ACTION

- (1) Wisconsin corrections industries shall promote equal employment opportunity through affirmative action in programs and practices including, but not limited to: recruitment, selection, promotion, termination, layoff, pay rates, training programs, and appointment to committees. The goal of the affirmative action program is a racially balanced inmate work force in each employing unit that reflects the racial percentages of the institutions.
- (2) Corrections industries will gather pertinent racial information from its employing units monthly. A monthly report by the affirmative action office of the department of health and social services, the administrator, and the head of industries will be prepared including the following information: shop name, monthly work force by race, average monthly pay by race, average hourly pay by race, percentage representation by race.
- (3) Efforts should be made to offer women and men similar opportunities, consistent with available resources.
- (4) Industries management shall monitor status reports under this section and direct corrective action if necessary.

NOTE: In correctional institutions equal employment opportunities must be ensured for minority groups.

Because on-the-job training is provided in Wisconsin corrections industries, with prior skill not being required for employment, underrepresentation of minorities in skilled positions or overrepresentation in low-skilled positions may indicate discrimination.

In recent years awareness of the problems of discrimination has been growing and remedies have been adopted to deal with them. But despite these efforts, discrimination remains a problem, and this section provides remedial action.

This section conforms to the policy of the department of health and social services. (Policy Statement: Wisconsin Department of Health and Social Services, Donald E. Percy, Secretary, June 1978.) This section also conforms to standard 2.8--nondiscriminatory treatment--of the National Advisory Commission on Criminal Justice Standards and Goals, Corrections (1973), pp. 41-42.

HSS 313.13 TOTAL SHOP SHUTDOWN AND LAYOFF

- (1) The management of Wisconsin corrections industries has the authority to lay off inmate employees when business conditions dictate such action.
- (2) If a lay off situation is temporary, the affected employee shall receive one-half his or her base pay during the lay off period. A "temporary lay off" means a period of 15 working days or less.
- (3) Employees who are involuntarily permanently separated from employment with Wisconsin corrections industries are eligible to receive a separation allowance equal to two weeks base wages using a normal work week for computation. "Involuntarily permanently separated" employees are those who are dropped from employment and are not reemployed within 15 working days.
- (4) If the employee separated under subsection (3) is called back within 60 calendar days following involuntary separation, he or she shall return at the former base wage rate.
- (5) An employee who is laid off from one shop may be offered a position in another shop. If the employee does not accept the offered position, the employee shall be terminated from employment with Wisconsin corrections industries and receive no further pay or benefits.

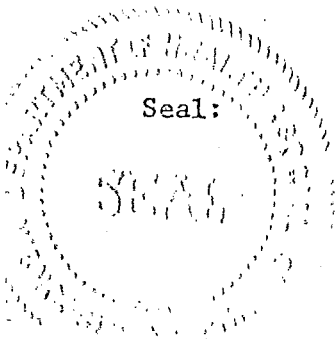
- (6) Any employee temporarily laid off shall be referred to the program review committee for reassignment.

NOTE: When managing a diversified business such as Wisconsin corrections industries, it may become necessary, as a last resort, to lay off employees. Cessation of production or reduction in the work force may result from, for example, a severe drop in sales, a supply shortage, equipment failure, transferring operations from one institution to another, or combining operations to streamline production. At times, it may be necessary to reduce the work force as a sound business management practice in order to maintain a self-supporting industries program as described in HSS 313.01.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, as provided in s. 227.026(1), Stats.

Dated: 5-6-82

Department of Health and Social Services



A handwritten signature in black ink, appearing to read "D. Percy", written over a horizontal line.

Donald E. Percy, Secretary

