

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules
(JCR-AR)*

Sample:

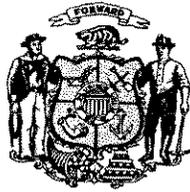
- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
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- Clearinghouse Rules ... CRule
-
- Committee Hearings ... CH
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- Committee Reports ... CR
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- Executive Sessions ... ES
- 97hr_JCR-AR_ES_pt02c
- Hearing Records ... HR
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- Miscellaneous ... Misc
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-

— JCRAR Executive Session
February 20, 1997

Tommy G. Thompson
Governor

Linda Stewart
Secretary



OFFICE OF THE SECRETARY
201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-7552
FAX: (608) 266-1784

State of Wisconsin
Department of Workforce Development

FEB 06 1997

February 5, 1997

The Honorable Richard Grobschmidt
State Senator
Room 404, 100 North Hamilton Street
Madison WI 53702

The Honorable Glenn Grothman
State Representative
125 West, State Capitol
Madison WI 53702

Re: DWD 272 - Minimum Wage

Dear Senator Grobschmidt and Representative Grothman:

We would like to request a 60 day extension on the Wisconsin Minimum Wage emergency rule which became effective on October 1, 1996. The rule will expire on February 27 unless it is extended.

The Wisconsin Legislative council assigned Clearinghouse Rule number 96-181 to DWD 272, Minimum Wage.

The public hearing was held on December 17, 1996 and the deadline for written testimony was held open until December 30, 1996. The rule is being reviewed by my office and will be delivered to the Chief Clerks for assignment to the appropriate committees by Friday, February 7, 1997. The Department expects to have the permanent rule in place by June 1, 1997.

If this emergency rule is not extended, the state minimum wage rate would again be different than the federal rate. This would cause confusion for Wisconsin's employers and the public, and make it nearly impossible for the Labor Standards Bureau in this department to audit the labor standards violations which would result.

Thank you for your consideration of this request. Please contact Katie Mnuk, the Department's Legislative Liaison at 267-3200 if you have any questions concerning this rule extension.

Sincerely,

A handwritten signature in cursive script that reads "Linda Stewart".

Linda Stewart
Secretary Designate

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE
DOA-2048 N(R10/94)

Subject

Minimum Wage

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb
Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation
- Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenues
 - Permissive Mandatory
- 4. Decrease Revenues
 - Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The state and local governments will incur increased salary costs in some programs due to the increase in the minimum wage. However, this is caused by the federal legislation amending the Fair Labor Standards Act, and not by this emergency rule, which affects private sector employers that are not covered by the FLSA. The Department will incur some one-time costs, estimated at \$5,000.00, due to reprinting posters and pamphlets and taking other steps to publicize the new minimum wage rate.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.) <i>Howard Bernstein 266-9427</i>	Authorized Signature/Telephone No. <i>Howard Bernstein</i>	Date <i>3/20/96</i>
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FISCAL ESTIMATE WORKSHEET

1995 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 272

Amendment No.

Subject

Minimum Wage

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

\$5,000.00

II. Annualized Costs:

Annualized Fiscal impact on State funds from:

A. State Costs by Category

Increased Costs

Decreased Costs

State Operations - Salaries and Fringes

\$

\$ -

(FTE Position Changes)

(FTE)

(- FTE)

State Operations - Other Costs

-

Local Assistance

-

Aids to Individuals or Organizations

-

TOTAL State Costs by Category

\$

\$ -

B. State Costs by Source of Funds

Increased Costs

Decreased Costs

GPR

\$

\$ -

FED

-

PRO/PRS

-

SEG/SEG-S

-

III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$ -

GPR Earned

-

FED

-

PRO/PRS

-

SEG/SEG-S

-

TOTAL State Revenues

\$

\$ -

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ 0 _____

\$0 _____

NET CHANGE IN REVENUES

\$0 _____

\$0 _____

Agency/Prepared by: (Name & Phone No.)

DWD / HOWARD BERNSTEIN 266-9427

Authorized Signature/Telephone No.

Howard Bernstein

Date

8/20/96



State of Wisconsin \ Department of Workforce Development

RULES in FINAL DRAFT FORM

Rule No.:

_____ DWD 272 _____

Relating to:

_____ Minimum Wage _____

CHAPTER DWD 272

MINIMUM WAGES

The Wisconsin Department of Workforce Development proposes an order to repeal DWD 272.001(3), (4) and (5); to renumber ch. ILHR 272; to amend DWD 272.01(4), 272.07(title), (1), (4) and (5), 272.09(1)(g), (h) and (m), and 272.13(intro.) and (1); to repeal and recreate DWD 272.01(11) and 272.03(1), (2)(a), and (3); and to create DWD 272.03(1m), 272.03(3m) and 274.04(15), relating to the minimum wage.

Analysis

Statutory authority: §§103.005(1), 103.02 and 104.04, Stats.

Statutes interpreted: §§ 103.02 and 104.04, Stats.

This rule makes the following changes to Wisconsin's permanent administrative rules relating to minimum wage rates:

- The general minimum wage rate for all employes is set at \$4.75 per hour effective October 1, 1996, and \$5.15 per hour effective September 1, 1997. This matches the rates set by the federal Fair Labor Standards Act.
 - The rule defines an "opportunity employe" as an employe who is under 20 years of age and in his or her first 90 days of employment. The minimum wage for an opportunity employe is \$4.25 per hour. This provision is similar to the provision on probationary employes in the federal Fair Labor Standards Act.
 - The rules which set separate categories for minor employes (at \$0.35 per hour less than the basic minimum wage rate) and probationary employes (at \$0.30 per hour less than the basic minimum wage rate) are repealed.
 - The rules which set the rates at which the department values board and lodging for regular and opportunity employes have been amended to reflect the new minimum wage rates.
 - The proposed rule contains a corrective amendment to the provisions on subminimum wage licenses, relating to changing the term "sheltered workshops" to "rehabilitation facilities."
 - The proposed rule includes a provision similar to a recent amendment to the federal Fair Labor Standards Act which creates an exemption from the general requirement to pay overtime to "computer professionals" who are paid at least \$27.63 per hour.
-

SECTION 1. ch. ILHR 272 is renumbered ch. DWD 272.

SECTION 2. DWD 272.001(3), (4) and (5) are repealed.

SECTION 3. DWD 272.01(4) is amended to read:

DWD 272.01(4) "Department" means the department of ~~industry, labor and human relations~~ workforce development.

SECTION 5. DWD 272.01(11) is repealed and recreated to read:

DWD 272.01(11) "Opportunity employe" means an employe who is not yet 20 years old, during the first 90 consecutive days after the employe is initially employed by the employer.

SECTION 6. DWD 272.03(1) is repealed and recreated to read:

DWD 272.03(1) MINIMUM RATES. This subsection is in effect from October 1, 1996, to August 31, 1997. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employe in any occupation, trade or industry at a lesser hourly rate than is indicated below:

- (a) All employes except opportunity employes \$4.75 per hr.
- (b) Opportunity employes \$4.25 per hr.

SECTION 7. DWD 272.03(1m) is created to read:

DWD 272.03(1m) MINIMUM RATES. This subsection becomes effective on September 1, 1997. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employe in any occupation, trade or industry at a lesser hourly rate than is indicated below:

- (a) All employes except opportunity employes \$5.15 per hr.
- (b) Opportunity employes \$4.25 per hr.

SECTION 8. DWD 272.03(2)(a) is repealed and recreated to read:

DWD 272.03(2)(a) Minimum rates for tipped employes:

- (a) All employes except opportunity employes \$2.33 per hr.
- (b) Opportunity employes \$2.13 per hr.

SECTION 9. DWD 272.03(3) is repealed and recreated to read:

DWD 272.03(3) ALLOWANCE FOR BOARD AND LODGING. This subsection is in effect from October 1, 1996, to August 31, 1997. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employe, an allowance may be made not to exceed the following amounts:

(a) Lodging:

- All employes except opportunity employes \$38.00 per week or \$5.45 per day
- Opportunity employes \$34.00 per week or \$4.85 per day

(b) Meals:

- All employes except opportunity employes \$57.00 per week or \$2.70 per meal
- Opportunity employes \$51.00 per week or \$2.45 per meal

SECTION 10. DWD 272.03(3m) is created to read:

DWD 272.03(3m) ALLOWANCE FOR BOARD AND LODGING. This subsection becomes effective on September 1, 1997. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employe, an allowance may be made not to exceed the following amounts:

(a) Lodging:

All employes except opportunity employes \$41.20 per week or \$5.90 per day

Opportunity employes \$34.00 per week or \$4.85 per day

(b) Meals:

All employes except opportunity employes \$61.80 per week or \$2.95 per meal

Opportunity employes \$51.00 per week or \$2.45 per meal

SECTION 11. DWD 272.07(title) and (1) are amended to read:

DWD 272.07 **Recreational or educational camps.** (1) The minimum wage of all employes employed in ~~seasonal~~ recreational or educational camps and day camps, except counselors, shall be computed on an hourly basis as prescribed in s. ~~ILHR~~ DWD 272.03(1).

SECTION 12. DWD 272.07(4) and (5) are amended to read:

DWD 272.07(4) ~~Seasonal-recreational~~ Recreational or educational camps and day camps ~~will not have~~ are not required to keep the daily and weekly time records required by s. ~~ILHR~~ DWD 272.11 (1) (d), (e), and (f), for counselors employed and paid on a weekly basis.

(5) For the purpose of this section:

(a) A "seasonal recreational or educational camp" means a camp operated under trained leadership for the purpose of providing group experience for and contributing to the physical,

mental, spiritual and social growth of campers who are less than 18 years of age and who make such camp their residence during the camping period.

(b) A "seasonal recreational or educational day camp" means a camp operated under trained leadership for the purpose of providing group experience and contributing to the physical, mental, spiritual and social growth of campers who participate in such camping program during daytime periods, but not overnight.

(c) A "camp counselor" means a person employed by a "seasonal recreational or educational camp" or "seasonal recreational or educational day camp" who leads, directs and instructs campers in such camps in their camping program and activities and shares responsibility for the total care and well-being of campers.

SECTION 13. DWD 272.09(1)(g), (h)(intro.) and (m) are amended to read:

DWD 272.09(1)(g) "Sheltered workshop" means a rehabilitation facility which is a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(h)(intro.) "Sheltered workshop training program" or "rehabilitation training program" means a program of not more than 12 months duration designed to:

(m) "Work activity center" means a rehabilitation facility, a workshop or a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped

workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

SECTION 14. DWD 272.13 (intro.) and (1) are amended to read:

DWD 272.13 The following forms are listed in accordance with s. 227.23, Stats. These forms are issued by and may be obtained from the Equal Rights Division, Department of ~~Industry, Labor and Human Relations~~ Workforce Development, P.O. Box 8928, Madison, Wisconsin 53708.

(1) ER-39 Minimum Wage ~~Poster~~ Rates.

SECTION 15. DWD 274.04(15) is created to read:

DWD 274.04(15) Any employe who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, who, in the case of an employe who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour, and whose primary duty is one of the following:

- (a) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.
- (b) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.
- (c) The design, documentation, testing, creation or modification of computer programs related to machine operating systems.

(d) A combination of the duties described in pars. (a), (b) and (c), the performance of which requires the same level of skills.

NOTE: This provision is intended to be interpreted in a manner consistent with 29 USC 213(a)(17).

SECTION 16. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2)(intro.), Stats.

(End)

LRB or Bill No./Adm. Rule No.
DWD 272

Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Minimum Wage

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb
Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The state and local governments will incur increased salary costs in some programs due to the increase in the minimum wage. However, this is caused by the federal legislation amending the Fair Labor Standards Act, and not by this emergency rule, which affects private sector employers that are not covered by the FLSA. The Department will incur some one-time costs, estimated at \$5,000.00, due to reprinting posters and pamphlets and taking other steps to publicize the new minimum wage rate.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

By: *Howard Bernstein* 266-9427

Howard Bernstein

3/20/96

FISCAL ESTIMATE WORKSHEET

1995 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 272

Amendment No.

Subject

Minimum Wage

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

\$5,000.00

II. Annualized Costs:

Annualized Fiscal impact on State funds from:

A. State Costs by Category

Increased Costs

Decreased Costs

State Operations - Salaries and Fringes

\$

\$

-

(FTE Position Changes)

(

FTE)

(-

FTE)

State Operations - Other Costs

-

Local Assistance

-

Aids to Individuals or Organizations

-

TOTAL State Costs by Category

\$

\$

-

B. State Costs by Source of Funds

Increased Costs

Decreased Costs

GPR

\$

\$

-

FED

-

PRO/PRS

-

SEG/SEG-S

-

III. State Revenues -

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$

-

GPR Earned

-

FED

-

PRO/PRS

-

SEG/SEG-S

-

TOTAL State Revenues

\$

\$

-

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ 0

\$ 0

NET CHANGE IN REVENUES

\$ 0

\$ 0

Agency/Prepared by: (Name & Phone No.)

DWD / HOWARD BERNSTEIN 266-9427

Authorized Signature/Telephone No.

Howard Bernstein

Date

8/20/96

Wisconsin State AFL-CIO

CHARTERED 1958

6333 W. BLUEMOUND RD., MILWAUKEE, WISCONSIN 53213 PHONE (414) 771-0700 FAX (414) 771-1715

David Newby, President • Michael J. Paul, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

February 10, 1997

Senator Kim Plache, Chair
Senate Labor, Transportation and Financial Institutions Committee
P.O. Box 7882
Madison, Wisconsin 53707-7882

Representative Daniel Vrakas, Chair
Assembly Labor and Employment Committee
P.O. Box 8953
Madison, Wisconsin 53708

Dear Senator Plache and Representative Vrakas:

RE: Minimum Wage Clearinghouse Rule 96-181

This proposed rule by the Department of Workforce Development may be referred to your committees very soon. Unfortunately, we were unable to comment at the hearing held by DWD but we are pleased that the state minimum wage is being raised. However, unless the rule has been modified, we have the following concerns:

(1) **Potential Expansion of Employers That Are Licensed to Pay Subminimum Wage.** The proposed rule adds the word "rehabilitation facility" to the rule related to sheltered workshops and subminimum wage licenses. If this is not meant to change the meaning of the type of facility that is covered, then adding the words "rehabilitation facility" is unnecessary. On the other hand, this rule might be later interpreted to broaden what has been traditionally viewed as sheltered workshops. Sheltered workshops are for persons who are seriously and permanently disabled. Their function is not rehabilitative. A rehabilitative facility would be one for persons who are not severely handicapped but have not reached a certain healing plateau in their recovery from injuries. We are concerned about this potential expansion of employers that could pay subminimum wage.

(2) **Potential Exploitation of Youth Through the "Opportunity Wage".** We have always strongly objected to the subminimum probationary wage for youth, but at least the former minimum wage rule restricted the subminimum wage to be paid only once, for 60 days of employment. It didn't allow the subminimum to be repeated for each employer. The proposed rule replaces the past policy on probationary wage with a new wage category called the "Opportunity Wage". Workers up to age 20 could be paid the lower wage rate of \$4.25 an hour **each time** they begin a new job. It assumes that there is no positive, cumulative effect from work experience and that what is learned in initial employment is non-transferrable. It increases the length of probation to give employers a generous **third month** of cheaper labor when the abilities of an employee will be evident in a few **weeks**. It certainly does not send a positive message about the value of work. We object to any subminimum wage, but if that is how our working youth are to be treated, the subminimum should be limited to the first 60 days of employment in an individual's work history.

(3) **Denial of Needed Wage Increases and Meal/Lodging Allowance Increases in September 1997 in Subminimum Categories.** Though the state minimum wage would again be increased to \$5.15 in September 1997 to match the federal minimum wage, the "Opportunity Employee" wage rates and the "Agricultural Minor Employee" rates are frozen at October 1996 levels (\$4.25 and \$4.20 an hour respectively). The allowance for board and lodging for "Opportunity Employees" and "Agricultural Minor Employees" is also not increased. This will create an even greater disparity between regular employees and those who are paid a subminimum wage. Adjustments need to be made in these categories for wage increases in proportion to those that adult workers will receive and the meal/lodging allowances should be adjusted upward as well.

(4) **Lack of Displacement Protection for Current Workers.** The federal minimum wage law passed in 1996 wisely included protection for workers against displacement because employers have an incentive, due to the subminimum Opportunity Wage, to reduce payroll costs by hiring youth as cheap labor at the expense of current workers. In Wisconsin, under the proposed rule, they will have an even greater incentive after September 1997. The proposed state rule should include the following federal language: "No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages or employment benefits) for purposes of hiring individuals" at the Opportunity Wage.

(5) **Tipped Employees Receive No Increase.** The Adult Tipped Wage remains at \$2.33 an hour and the Minor Tipped Wage at \$2.13. (At least the probationary wages for adults (\$2.20) and minors (\$2.00) were both eliminated.) In spite of the meager federal wage for this category of worker (\$2.13), the state minimum should be raised. The state has justified the higher wage rates for these Wisconsin workers in the past, and they deserve an increase in their base wage as well.

We ask that these concerns be taken into consideration when committee members review this proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Neuenfeldt", with a stylized flourish at the end.

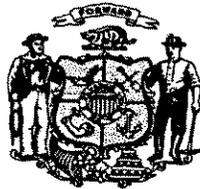
Phil Neuenfeldt
Secretary-Treasurer

cc David Newby, President
Wisconsin State AFL-CIO

Sheehan Donoghue, Administrator
Equal Rights Division
Department of Workforce Development

Tommy G. Thompson
Governor

Linda Stewart
Secretary



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State of Wisconsin
Department of Workforce Development

FEB 11 1997

February 6, 1997

Senate Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Assembly Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE
RULES AND REPORTS**

CLEARINGHOUSE RULE NO. 96-181

RULE NO. DWD 272

RELATING TO: Minimum Wage

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Linda Stewart'.

Linda Stewart
Secretary Designate

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Workforce Development

CLEARINGHOUSE RULE 96-181

RULE NO.: DWD 272

RELATING TO: Minimum Wage

Agency contact person for substantive questions.

Name: Howard Bernstein

Title: Legal Counsel

Telephone No. (608) 266-9427

Legislative Council report recommendations accepted in whole.

Yes No

1. Review of statutory authority (s.227.15(2)(a))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

2. Review of rules for form, style and placement in administrative code (s.227.15(2)(c))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

3. Review rules for conflict with or duplication of existing rules (s.227.15(2)(d))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

4. Review rules for adequate references to related statutes, rules and forms (s.227.15(2)(e))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

5. Review language of rules for clarity, grammar, punctuation and plainness (s.227.15(2)(f))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

6. Review rules for potential conflicts with, and comparability to, related federal regulations (s.227.15(2)(g))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

7. Review rules for permit action deadline (s.227.15(2)(h))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

Tommy G. Thompson
Governor

Linda Stewart
Secretary



OFFICE OF THE SECRETARY
201 East Washington Avenue
P.O. Box 7946
Madison, WI 53707-7946
Telephone: (608) 266-7552
FAX: (608) 266-1784

State of Wisconsin
Department of Workforce Development

February 6, 1997

Senator Fred Risser
President of the Senate
119 Martin Luther King Blvd., Ste 102
Madison, Wisconsin 53702

Representative Ben Brancel
Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Risser and Representative Brancel:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO. 96-181

RULE NO. DWD 272

RELATING TO: Minimum Wage

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) DWD Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) DWD Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

Also included is a waiver of authority letter. If the respective standing committees have no objections to the rules, we respectfully request that their chairpersons sign the letter and return it as soon as possible.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted

A handwritten signature in cursive script that reads 'Linda Stewart'.

Linda Stewart
Secretary Designate



State of Wisconsin \ Department of Workforce Development

RULES in FINAL DRAFT FORM

Rule No.:

_____ DWD 272 _____

Relating to:

_____ Minimum Wage _____

CHAPTER DWD 272

MINIMUM WAGES

The Wisconsin Department of Workforce Development proposes an order to repeal DWD 272.001(3), (4) and (5); to renumber ch. ILHR 272; to amend DWD 272.01(4), 272.07(title), (1), (4) and (5), 272.09(1)(g), (h) and (m), and 272.13(intro.) and (1); to repeal and recreate DWD 272.01(11) and 272.03(1), (2)(a), and (3); and to create DWD 272.03(1m), 272.03(3m) and 274.04(15), relating to the minimum wage.

Analysis

Statutory authority: §§103.005(1), 103.02 and 104.04, Stats.

Statutes interpreted: §§ 103.02 and 104.04, Stats.

This rule makes the following changes to Wisconsin's permanent administrative rules relating to minimum wage rates:

- The general minimum wage rate for all employees is set at \$4.75 per hour effective October 1, 1996, and \$5.15 per hour effective September 1, 1997. This matches the rates set by the federal Fair Labor Standards Act.
 - The rule defines an "opportunity employe" as an employe who is under 20 years of age and in his or her first 90 days of employment. The minimum wage for an opportunity employe is \$4.25 per hour. This provision is similar to the provision on probationary employes in the federal Fair Labor Standards Act.
 - The rules which set separate categories for minor employes (at \$0.35 per hour less than the basic minimum wage rate) and probationary employes (at \$0.30 per hour less than the basic minimum wage rate) are repealed.
 - The rules which set the rates at which the department values board and lodging for regular and opportunity employes have been amended to reflect the new minimum wage rates.
 - The proposed rule contains a corrective amendment to the provisions on subminimum wage licenses, relating to changing the term "sheltered workshops" to "rehabilitation facilities."
 - The proposed rule includes a provision similar to a recent amendment to the federal Fair Labor Standards Act which creates an exemption from the general requirement to pay overtime to "computer professionals" who are paid at least \$27.63 per hour.
-

SECTION 1. ch. ILHR 272 is renumbered ch. DWD 272.

SECTION 2. DWD 272.001(3), (4) and (5) are repealed.

SECTION 3. DWD 272.01(4) is amended to read:

DWD 272.01(4) "Department" means the department of ~~industry, labor and human relations~~ workforce development.

SECTION 5. DWD 272.01(11) is repealed and recreated to read:

DWD 272.01(11) "Opportunity employe" means an employe who is not yet 20 years old, during the first 90 consecutive days after the employe is initially employed by the employer.

SECTION 6. DWD 272.03(1) is repealed and recreated to read:

DWD 272.03(1) MINIMUM RATES. This subsection is in effect from October 1, 1996, to August 31, 1997. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employe in any occupation, trade or industry at a lesser hourly rate than is indicated below:

- (a) All employes except opportunity employes \$4.75 per hr.
- (b) Opportunity employes \$4.25 per hr.

SECTION 7. DWD 272.03(1m) is created to read:

DWD 272.03(1m) MINIMUM RATES. This subsection becomes effective on September 1, 1997. Except as provided in ss. DWD 272.05 to 272.09, no employer shall employ any employe in any occupation, trade or industry at a lesser hourly rate than is indicated below:

- (a) All employes except opportunity employes \$5.15 per hr.
- (b) Opportunity employes \$4.25 per hr.

SECTION 8. DWD 272.03(2)(a) is repealed and recreated to read:

DWD 272.03(2)(a) Minimum rates for tipped employes:

- (a) All employes except opportunity employes \$2.33 per hr.
- (b) Opportunity employes \$2.13 per hr.

SECTION 9. DWD 272.03(3) is repealed and recreated to read:

DWD 272.03(3) ALLOWANCE FOR BOARD AND LODGING. This subsection is in effect from October 1, 1996, to August 31, 1997. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employe, an allowance may be made not to exceed the following amounts:

(a) Lodging:

- All employes except opportunity employes \$38.00 per week or \$5.45 per day
- Opportunity employes \$34.00 per week or \$4.85 per day

(b) Meals:

- All employes except opportunity employes \$57.00 per week or \$2.70 per meal
- Opportunity employes \$51.00 per week or \$2.45 per meal

SECTION 10. DWD 272.03(3m) is created to read:

DWD 272.03(3m) ALLOWANCE FOR BOARD AND LODGING. This subsection becomes effective on September 1, 1997. Where board or lodging or both are furnished by the employer in accordance with s. DWD 272.04, and accepted and received by a particular employe, an allowance may be made not to exceed the following amounts:

(a) Lodging:

All employes except opportunity employes	\$41.20 per week or \$5.90 per day
Opportunity employes	\$34.00 per week or \$4.85 per day

(b) Meals:

All employes except opportunity employes	\$61.80 per week or \$2.95 per meal
Opportunity employes	\$51.00 per week or \$2.45 per meal

SECTION 11. DWD 272.07(title) and (1) are amended to read:

DWD 272.07 **Recreational or educational camps.** (1) The minimum wage of all employes employed in ~~seasonal~~ recreational or educational camps and day camps, except counselors, shall be computed on an hourly basis as prescribed in s. ~~ILHR~~ DWD 272.03(1).

SECTION 12. DWD 272.07(4) and (5) are amended to read:

DWD 272.07(4) ~~Seasonal-recreational~~ Recreational or educational camps and day camps ~~will not have~~ are not required to keep the daily and weekly time records required by s. ~~ILHR~~ DWD 272.11 (1) (d), (e), and (f), for counselors employed and paid on a weekly basis.

(5) For the purpose of this section:

(a) A "seasonal recreational or educational camp" means a camp operated under trained leadership for the purpose of providing group experience for and contributing to the physical,

mental, spiritual and social growth of campers who are less than 18 years of age and who make such camp their residence during the camping period.

(b) A "seasonal recreational or educational day camp" means a camp operated under trained leadership for the purpose of providing group experience and contributing to the physical, mental, spiritual and social growth of campers who participate in such camping program during daytime periods, but not overnight.

(c) A "camp counselor" means a person employed by a "seasonal recreational or educational camp" or "seasonal recreational or educational day camp" who leads, directs and instructs campers in such camps in their camping program and activities and shares responsibility for the total care and well-being of campers.

SECTION 13. DWD 272.09(1)(g), (h)(intro.) and (m) are amended to read:

DWD 272.09(1)(g) "Sheltered workshop" means a rehabilitation facility which is a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(h)(intro.) "Sheltered workshop training program" or "rehabilitation training program" means a program of not more than 12 months duration designed to:

(m) "Work activity center" means a rehabilitation facility, a workshop or a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped

workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

SECTION 14. DWD 272.13 (intro.) and (1) are amended to read:

DWD 272.13 The following forms are listed in accordance with s. 227.23, Stats. These forms are issued by and may be obtained from the Equal Rights Division, Department of Industry, ~~Labor and Human Relations~~ Workforce Development, P.O. Box 8928, Madison, Wisconsin 53708.

(1) ER-39 Minimum Wage Poster Rates.

SECTION 15. DWD 274.04(15) is created to read:

DWD 274.04(15) Any employe who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, who, in the case of an employe who is compensated on an hourly basis, is compensated at a rate of not less than \$27.63 an hour, and whose primary duty is one of the following:

(a) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

(b) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.

(c) The design, documentation, testing, creation or modification of computer programs related to machine operating systems.

(d) A combination of the duties described in pars. (a), (b) and (c), the performance of which requires the same level of skills.

NOTE: This provision is intended to be interpreted in a manner consistent with 29 USC 213(a)(17).

SECTION 16. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22(2)(intro.), Stats.

(End)

RULE REPORT

Department of Workforce Development

Rule No.: DWD 272

Relating to: Minimum Wage

Agency contact person for substantive questions.

Name James L. Stelsel

Title Labor Standards Bureau Director

Telephone Number (608) 266-0026

Agency contact person for internal processing.

Name Howard Bernstein

Title Legal Counsel

Telephone Number (608) 266-9427

1. Agency statutory authority under which the agency intends to promulgate the rule(s).

Section 104.04, Stats.

2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).

**Fair Labor Standards Act, 29. U.S.C. Sections 201-219
29 CFR Parts 500 through 800**

3. Citation of court decisions which are applicable to the proposed rule(s).

None

4. Description of the proposed rule(s).

Please see the analysis printed with the rule text.

5. Reason for the proposed rule(s).

Please see the analysis printed with the rule text.

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 272

Amendment No. if Applicable

Subject

Minimum Wage

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive
 - Mandatory
- 2. Decrease Costs
 - Permissive
 - Mandatory

- 3. Increase Revenues
 - Permissive
 - Mandatory
- 4. Decrease Revenues
 - Permissive
 - Mandatory

5. Types of Local Governmental Units Affected:
- Towns
 - Villages
 - Cities
 - Counties
 - Others _____
 - School Districts
 - WTCS Districts

Fund Sources Affected

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The state and local governments will incur increased salary costs in some programs due to the increase in the minimum wage. However, this is caused by the federal legislation amending the Fair Labor Standards Act, and not by this emergency rule, which affects private sector employers that are not covered by the FLSA. The Department will incur some one-time costs, estimated at \$5,000.00, due to reprinting posters and pamphlets and taking other steps to publicize the new minimum wage rate.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

Howard Bernstein 266-9427

Howard Bernstein
Rinda Stewart

8/20/96

FISCAL ESTIMATE WORKSHEET

1995 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 272

Amendment No.

Subject

Minimum Wage

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

\$5,000.00

II. Annualized Costs:

A. State Costs by Category

Annualized Fiscal impact on State funds from:

Increased Costs

Decreased Costs

State Operations - Salaries and Fringes

\$

\$ -

(FTE Position Changes)

(FTE)

(- FTE)

State Operations - Other Costs

-

Local Assistance

-

Aids to Individuals or Organizations

-

TOTAL State Costs by Category

\$

\$ -

B. State Costs by Source of Funds

Increased Costs

Decreased Costs

GPR

\$

\$ -

FED

-

PRO/PRS

-

SEG/SEG-S

-

III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$ -

GPR Earned

-

FED

-

PRO/PRS

-

SEG/SEG-S

-

TOTAL State Revenues

\$

\$ -

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ 0

\$ 0

NET CHANGE IN REVENUES

\$ 0

\$ 0

Agency/Prepared by: (Name & Phone No.)

DWD / HOWARD BERNSTEIN 266-9427

Authorized Signature/Telephone No.

Howard Bernstein
Gina Stewart

Date

8/20/96

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 96-181

AN ORDER to repeal DWD 272.001 (3), (4) and (5) and 272.01 (9); to renumber ch ILHR 272; to amend DWD 272.01 (4), 272.07 (title), (1), (4) and (5), 272.09 (1) (g), (h) and (m) and 272.13 (intro.) and (1); to repeal and recreate DWD 272.01 (11), 272.03 (1), (2) (a) and (3) and 272.05; and to create DWD 272.03 (1m) and (3m) and 274.04 (15), relating to the minimum wage.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

11-18-96 RECEIVED BY LEGISLATIVE COUNCIL.
12-17-96 REPORT SENT TO AGENCY.

RS:DF;jt;kja

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 96-181

Comments

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

2. Form, Style and Placement in Administrative Code

a. The introductory clause of the rule-making order should *not* contain references to the agency's statutory authority for promulgating the rules. Statutory authority should be cited as part of the "plain language analysis" preceding the text of the proposed rules. [See s. 1.02 (1) and (2), Manual.]

b. In s. DWD 272.03 (1) (a), and throughout the rule, it would be more accurate to replace the phrase "All employes" with the phrase "All employes, except opportunity employes." Also, in these lists, since the terms "opportunity employes" and "minor" are defined in s. DWD 272.01, it is unnecessary to include the parenthetical descriptions of these terms.

c. It appears that the provisions of s. DWD 272.05 (1) and (2) are intended to expire on August 31, 1997. If so, why is this not expressly stated as in s. DWD 272.03 (1) and (3)?

d. In the treatment clause to SECTION 11, substitute "DWD" for "ILHR."

e. In proposed s. DWD 272.05 (2) (intro.) and (2m) (intro.), substitute "DWD" for "ILHR."

f. In s. DWD 272.07 (4), the phrase "will not have" should be replaced by the phrase "are not required."

g. In the treatment clause of SECTION 14, delete "As renumbered,".

h. In SECTION 17, delete "§" and substitute "s." Also, the effective date provision should clarify whether it is intended that the rule take effect upon the first day of the month following the publication of the rule in the Administrative Register or whether some other specific date is intended. [See s. 1.02 (4), Manual.]

SENATOR RICHARD GROBSCHMIDT
CO-CHAIRMAN

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Madison, WI 53707
Phone: 608-266-7505



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIRMAN

Room 125 West • State Capitol
Madison, WI 53703
Phone: 608-264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

February 18, 1997

TO: Members JCRAR
FROM: Senator Grobschmidt & Representative Grothman, Co-Chairs
RE: Additional materials for February 20th, Executive Session.

As additional background on the emergency rule extension requests that are on the agenda for our Thursday meeting, we are sending you copies of the Report to the Presiding Officer for the proposed permanent rules that will replace the emergency rules at the time they expire. The Report to the Presiding Officer includes a list of those persons who appeared at the agency hearing on the rule or who submitted written comments. The report also summarizes the comments of those persons on the rule and the department's response.

The report also addresses the editorial concerns raised by the Legislative Council Rules Clearinghouse on such questions as statutory authority, conflict with state law, clarity and other rule drafting issues.

It is our hope that using this information as part of our review of emergency rule extension requests will provide members with useful background on the rules and lead to greater coordination of our authority to extend rules and the standing committee review of proposed permanent rules on the same subject.

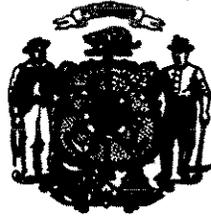
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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 96-156

AN ORDER to create HSS 201.135, relating to time-limited benefits for aid to families with dependent children (AFDC) recipients.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

10-01-96 RECEIVED BY LEGISLATIVE COUNCIL.
10-29-96 REPORT SENT TO AGENCY.

RNS:JLK:kjf:jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 96-156

Comments

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

I. Statutory Authority

a. The rule creates s. HSS 201.135, which provides that, subject to certain exceptions, an individual is not eligible for Aid to Families with Dependent Children (AFDC) if, beginning on the date the individual attained the age of 18 and during which he or she actively participated in the Job Opportunities and Basic Skills (JOBS) Program beginning on or after October 1, 1996, he or she has received AFDC for 60 months. The analysis states that 1995 Wisconsin Act 289 "includes a provision limiting the amount of time an individual may receive AFDC, W-2 [Wisconsin Works] employment position benefits or a combination thereof."

However, Act 289 does *not* limit the time an individual may receive AFDC. Rather, Act 289 limits the time an individual is eligible for W-2 employment position benefits. Moreover, while the first paragraph of the proposed order cites three provisions as authority for the rule [ss. 49.145 (2) (n) and 49.50 (2), Stats., and SECTION 275 (3) of Act 289], none of these three provisions provides statutory authority to impose a time limit on AFDC benefits. As for the three provisions cited:

- (1) Section 49.145 (2) (n), Stats. (which was created by Act 289 and which is specified as the statute interpreted by the rule), establishes one of the nonfinancial eligibility criteria for *W-2 employment positions and W-2 job access loans* by providing that an individual is eligible for these if the total number of months the individual has actively participated in the JOBS program on or after July 1, 1996, or held a W-2 employment position, or both, does not exceed 60 months. *Section 49.145 (2) (n), Stats., does not limit the amount of time an individual is eligible for AFDC.*

- (2) Section 49.50 (2), Stats., which was renumbered to s. 49.33 (4), Stats., by 1995 Wisconsin Act 27, authorizes the department to promulgate rules for the *administration* of AFDC. It does not authorize the department to impose a time limit on AFDC benefits.
- (3) SECTION 275 (3) of Act 289 authorizes the department to promulgate rules for the *administration* of the *W-2 program, not AFDC*.

Neither s. 49.145 (2) (n), Stats., nor any other provision of the Wisconsin statutes authorizes imposing a time limit on AFDC benefits, other than for purposes of the Work-Not-Welfare (WNW) demonstration project. In addition to the fact that there is no statutory authority to impose the proposed time limit on AFDC benefits, the rule would be moot even if it were created. The rule would impose a 60-month time limit on AFDC counting, at the earliest, from October 1, 1996. However, since 1993 Wisconsin Act 99 provides that AFDC will be repealed on January 1, 1999 and since Act 289 provides that the W-2 program will replace AFDC before that date, a person could never receive 60 months of AFDC benefits after October 1, 1996. Thus, the time limit on receipt of AFDC created by the rule could never be imposed with respect to AFDC.

Other problems inherent in the rule also evidence the lack of statutory authority to impose a time limit on AFDC benefits. Examples include the following:

- (1) Section HSS 201.135 (2) (intro.) provides that an "agency" may extend the 60-month time limit under unusual circumstances. In s. HSS 201.03 (4), "agency" is defined as the county department of social services or human services, or a tribal agency that administers economic support programs. That definition would apply to s. HSS 201.135. However, s. 49.145 (2) (n), Stats., provides that it is the *W-2 agency* that determines if unusual circumstances exist that warrant an extension of the 60-month time limit on eligibility for a W-2 employment position.
- (2) Section HSS 201.135 (2) (b) 1. and 2. refer to "unsubsidized employment." However, that term is not defined in ch. HSS 201. Rather, "unsubsidized employment" is a term defined in s. 49.147 (1) (a), Stats., for purposes of the *W-2 program*, not the AFDC program.

b. Section 49.145 (2) (n), Stats., provides that participation in the JOBS program begins to count toward the 60-month time limit on eligibility *for W-2 employment positions* beginning on *July 1, 1996*. In contrast, s. HSS 201.135 (1) provides that participation in the JOBS program begins to count toward the 60-month time limit on eligibility *for AFDC* beginning on *October 1, 1996*. Again, as discussed above, there is no statutory authority for the time limit on AFDC benefits. However, even if s. 49.145 (2) (n), Stats., were interpreted as providing such authority, it does not authorize beginning counting JOBS participation from October 1, 1996. It clearly provides for counting participation in the JOBS program beginning July 1, 1996. There is no statutory authority for using October 1, 1996 as the beginning date for counting months of JOBS participation for any purpose, much less for the purpose of limiting AFDC benefits. (The Federal Temporary Assistance for Needy Families (TANF) program, which provides that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult

who has received assistance for 60 months under a state program funded by the TANF block grant, does not, in and of itself, amend Wisconsin statutes regarding public assistance benefits available. In particular, it does not amend the date specified in s. 49.145 (2) (n), Stats., that is, July 1, 1996, not October 1, 1996.)

c. Assuming for the sake of argument that there were statutory authority to impose a time limit on AFDC benefits, what provides statutory authority for the exemption of certain persons as set forth in s. HSS 201.135 (5)?

2. Form, Style and Placement in Administrative Code

a. Throughout the rule, a space should be left between "s." and "HSS" in cross-references.

b. In s. HSS 201.135 (2) (intro.), "any of the following" should be inserted before the colon. Paragraphs (a) and (b) 1. and 2. should all end with periods rather than a semicolon or "; or". [s. 1.03 (intro.), Manual.]

c. The definition in s. HSS 201.135 (2) (c) should begin "In this paragraph,". [s. 1.01 (7) (a), Manual.] In the alternative, the two sentences could be combined as follows: "(c) The adult . . . preclude finding a job that pays . . ."

d. In s. HSS 201.135 (5) (c), "Learnfare" should be lowercase.

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

a. In the first paragraph of the proposed order, the reference to s. 49.50 (2), Stats., should be changed to s. 49.33 (4), Stats., as it was renumbered by 1995 Wisconsin Act 27.

b. In s. HSS 201.135 (1), the reference to "s. HSS 206" should be changed to "ch. HSS 206".

c. Section HSS 201.135 (5) creates an exception to the 60-month time limit in s. HSS 201.135 (1) by listing individuals who are not subject to s. HSS 201.135 (1). Section HSS 201.135 (1) should refer to this exception, for example, by including the language such as the following as its introductory clause: "Except as provided in sub. (5), an individual is not eligible for . . ."

d. Section HSS 201.135 (4) refers to s. HSS 201.19 (2m). That subsection does not currently exist. This citation should be reviewed for accuracy.

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

a. Section HSS 201.135 (2) (a) refers to a "JOBS program participant who is unable to work because of personal disability or incapacity, as defined under s. HSS 207.11 (1) (a)." However, s. HSS 207.11 (1) (a) does not "define" either of those terms. Instead, s. HSS 207.11

(1) (a) refers to a person who is “[i]ncapacitated, ill or injured with a medically-determined physical or mental impairment which prevents the person from temporarily or permanently participating in WNW employment or training activities.” Section HSS 207.11 (1) (a) also sets forth requirements regarding reexamination by a physician.

The rule should be clarified to eliminate the ambiguity created by the use of terms which are somewhat different and to address questions regarding whether conditions imposed by s. HSS 207.11 (such as reexamination) would also apply to s. HSS 201.135 (2) (a). Also, is there a reason that the reference was not to s. HSS 201.19 (1) (g), which sets forth almost identical provisions with respect to who is exempt from JOBS participation?

Moreover, considering that s. HSS 201.19 (1) (g) exempts these disabled individuals from participating in JOBS, how can the person be a “JOBS program participant”? “Participant” is defined for purposes of the JOBS program in s. HSS 206.03 (25) and includes only those persons assigned to a JOBS program activity. Although the phrase “JOBS program participant” is not defined in s. HSS 201.135, it (or a variation of it) is used several times in s. HSS 201.135. In s. HSS 201.135, it appears to refer to persons who enrolled in JOBS under s. HSS 206.07, even if they are exempt from participation under s. HSS 201.19. Thus, it appears to have a different meaning than “participant” in s. HSS 206.03 (25). Because of the potential for confusion, it would be useful to define the term “JOBS program participant” for purposes of s. HSS 201.135. In the alternative, should “enrollee” be used in s. HSS 201.135 with a cross-reference to the definition of that term in s. HSS 206.03 (16)?

Moreover, the inconsistent use of terms creates ambiguity. For example, s. HSS 201.135 (2) (b) (intro.) and 1. and (4) refer to “JOBS program participant”; s. HSS 201.135 (2) (b) 2. refers to “JOBS participant”; s. HSS 201.135 (2) (c) refers to “adult JOBS participants” and s. HSS 201.135 (5) (b) refers to “participant.” One term should be selected, defined and used consistently.

b. Section HSS 201.135 (2) (a) refers to a JOBS program participant who “is needed as determined under s. HSS 201.19 (1) (i) to remain at home to care for another member of the household whose incapacity is so severe that without constant in-home care provided by the JOBS program participant, the incapacitated AFDC group member’s health and well-being would be significantly affected.” However, s. HSS 201.19 (1) (i) simply refers to an AFDC recipient who is “[n]eeded, as determined by the agency, to remain at home to look after another member of the household because of that person’s medical condition.” Because of the additional language in s. HSS 201.135 (2) (a), it is not clear if the test under s. HSS 201.135 (2) (a) is intended to be identical to the test under s. HSS 201.19 (1) (i). This should be clarified.

Moreover, considering that s. HSS 201.19 (1) (i) exempts these people from participating in JOBS, the question with respect to defining them as “JOBS program participants” is also pertinent. (See comment 5. b.)

c. Section HSS 201.135 (2) (c) provides that “participants have . . . and are” In order to be consistent with the remainder of s. HSS 201.135 (2), the singular form should be used, that is, “participant has . . . and is”

d. Section HSS 201.135 (1) refers to a “60-month limit”; s. HSS 201.135 (2) refers to a “60 month time limit”; and s. HSS 201.135 (3) refers to a “60 month lifetime limit.” In order to

avoid ambiguity, one term should be selected and used consistently. The term selected should have a hyphen between "60" and "month."

e. The word "A" should be inserted preceding the word "Dependent" in s. HSS 201.135 (5) (a), and "Dependent" should not be capitalized.

f. Section HSS 201.135 (5) (b) refers to a participant "enrolled in JOBS control pay for performance (PFP) under s. HSS 201.045 (4) (b) 1." It would be clearer if this referred to a participant "enrolled in a JOBS pay for performance control group under s. HSS 201.045 (4) (b) 1." The parenthetical term should be deleted here and in s. HSS 201.135 (2) (b) 1.

CHAPTER DWD 11

RULE RELATING TO THE 60-MONTH LIFETIME LIMIT ON PARTICIPATION IN THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS) PROGRAM OR A WISCONSIN WORKS (W-2) EMPLOYMENT POSITION OR A COMBINATION THEREOF

Pursuant to the authority vested in the Wisconsin Department of Workforce Development (DWD) by s. 49.145(2)(n), Stats., the Department proposes an order to renumber ch. HSS 201 to DWD 11 and to create DWD 11.135, relating to circumstances under which the 60-month lifetime limit on participation in the Job Opportunities and Basic Skills (JOBS) program or a Wisconsin Works employment position or a combination thereof may be extended.

Analysis

(1) **Background.** Under the Aid to Families with Dependent Children (AFDC) program an individual may apply and be determined eligible for AFDC benefits with no regard to whether the individual has received benefits in the past or the number of months an individual may have already received benefits. Wisconsin Works (W-2), the replacement program for AFDC, as created by 1995 Wisconsin Act 289, includes a provision limiting the amount of time an individual may receive AFDC benefits, W-2 employment position benefits or a combination thereof. Under s. 49.145(2)(n), Stats., as created by 1995 Wisconsin Act 289, the total number of months in which an adult has actively participated in the Job Opportunities and Basic Skills (JOBS) program under s. 49.193, Stats., or has participated in a W-2 employment position or both may not exceed 60 months. The months need not be consecutive. Extensions to the 60-month lifetime limit may be granted only in unusual circumstances in accordance with rules promulgated by the Department. Section 49.141(2)(b), Stats., as created by 1995 Wisconsin Act 289, provides that if a federal waiver is granted or federal legislation is enacted, the Department may begin to implement the W-2 program no sooner than July 1, 1996. Participation in JOBS under s. 49.193, Stats., begins to

count toward the 60-month lifetime limit beginning on October 1, 1996.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law by President Clinton on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which provides that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult who has received assistance for 60 months, whether consecutive or not, under a state program funded by the TANF block grant. Wisconsin submitted its TANF Block Grant State Plan to the federal Administration for Children and Families on August 22, 1996. The Department implemented time limits on October 1, 1996, for AFDC recipients who are actively participating in the Job Opportunities and Basic Skills (JOBS) program. Implementation of the time limits is part of the continuing transition from AFDC to the W-2 program. W-2 will be implemented statewide in September 1997.

Time limits reinforce the idea that AFDC is a temporary support for families, rather than a long-term source of income. Wisconsin's Work Not Welfare (WNW) demonstration project which is operating in Fond du Lac and Pierce Counties, has shown that time limits create a sense of urgency for families to actively seek alternatives to AFDC. Time limits stress mutual responsibility: government provides support and services designed to promote employment and participants who are able must prepare for and enter employment.

The rule defines the term "actively participating" in the JOBS program and includes criteria a county or tribal economic support agency would use to determine whether an extension of the 60-month lifetime limit should be granted. The Department retains the right to review an economic support agency's decisions related to extensions.

(2) Authority for rule. s. 49.145(2)(n), Stats., establishes a lifetime limit of 60 months, beginning on an individual's 18th birthday, on the time that an individual may participate in the Job Opportunities and Basic Skills (JOBS) program under s. 49.193, Stats., or the Wisconsin Works (W-2) program under ss. 49.141 to 49.161, Stats. or a

combination thereof. In addition, s. 49.145(2)(n) provides that a W-2 agency may extend the time limit only if the agency determines, "in accordance with rules promulgated by the department, that unusual circumstances exist that warrant an extension of the participation period."

(3) **Unusual circumstances.** This rule establishes the following as unusual circumstances which may serve as the basis for the determination by a W-2 agency that the 60-month lifetime limit should be extended for a W-2 participant:

(a) A participant is unable to work because of personal disability or incapacity, or because he or she is needed to provide home care for a severely incapacitated member of his or her household.

(b) A participant has significant limitations to employment, such as low achievement ability, learning disability, severe emotional or family problems, or inability to find employment because of local labor market conditions.

(4) **Department review.** The rule provides that DWD may review and reverse the decision of a W-2 agency to extend a participant's eligibility beyond the 60-month lifetime limit.

(5) **Counting sanction months.** The rule provides that a month during which a JOBS or W-2 participant receives no payment or a reduced payment due to a sanction does count as a month of participation in JOBS or W-2 for the purposes of the 60-month lifetime limit.

(6) **Exceptions.** The rule provides that the 60-month lifetime limit does not apply to a dependent 18 year old, an 18 or 19 year old Learnfare participant, or a JOBS participant who is enrolled in a "control group" under the Pay for Performance program.

This is the permanent rule for time limited benefits. This rule replaces the emergency rule which was effective on October 1, 1996.

PROPOSED ORDER

Pursuant to the authority vested in the Department of Workforce Development by s. 49.145(2)(n), Stats., as created by 1995 Wisconsin Act 289, s. 49.33(4), Stats., and s.275(3) of 1995 Wisconsin Act 289, the Department of Workforce Development hereby creates a rule interpreting

s. 49.145(2)(n), as created by 1995 Wisconsin Act 289, as follows:

SECTION 1. ch. HSS 201 is renumbered ch. DWD 11.

SECTION 2. DWD 11.135 is created to read:

DWD 11.135 Time Limits. (1) **ELIGIBILITY.** Except as provided in sub. (2) or (5), an individual is not eligible for participation in the job opportunities and basic skills (JOBS) program or in a Wisconsin works (W-2) employment position under s. 49.147(3) to (5), Stats., if, beginning on the date the individual attained the age of 18, he or she has actively participated in the job opportunities and basic skills program or has participated in a Wisconsin works employment position, or both, for 60 months. The months need not be consecutive. Participation in the JOBS program begins to count toward the 60-month lifetime limit beginning on October 1, 1996. In this subsection, "actively participated" means that the individual was enrolled in the JOBS program under s. HSS 206.07.

(2) **ADDITIONAL MONTHS OF ELIGIBILITY.** An agency may extend the 60-month lifetime limit only under unusual circumstances. In this subsection, "unusual circumstances" means any of the following:

(a) A JOBS program participant is unable to work because of personal disability or incapacity, as defined under s. HSS 207.11(1)(a), or is needed as determined under s. DWD 11.19(1)(i) to remain at home to care for another member of the household whose incapacity is so severe that without constant in-home care provided by the JOBS program participant, the incapacitated AFDC group member's health and well-being would be significantly affected.

(b) A JOBS program participant has significant limitations to employment such as:

1. A JOBS program participant's low achievement ability, learning disability or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment, but are not sufficient to meet the criteria for eligibility for SSI under 42 USC 1381

to 1381d or social security disability insurance under 42 USC 401 to 433.

2. Family problems of such severity that they prevent the JOBS participant from obtaining or retaining unsubsidized employment.

(c) The adult JOBS participant has made all appropriate efforts to find work and is unable to find employment because local labor market conditions preclude a reasonable job opportunity. In this paragraph, "reasonable job opportunity" means a job that pays the federal minimum wage prescribed in 29 USC 206(a)1, and meets the conditions under 45 CFR Part 251.

(3) DEPARTMENT RESPONSIBILITY. The department may review an agency's decision to extend eligibility beyond the 60-month lifetime limit and may overturn an agency's decision.

(4) DETERMINATION OF PARTICIPATION. For the purpose of determining the number of months of participation under s. 49.145(2)(n), Stats., and this section, a participant in the JOBS program or a participant in a W-2 employment position under s. 49.147(3) to (5), Stats., shall be considered to have actively participated in a month in which, as a result of a sanction, a reduced payment or no payment is made to the participant.

(5) WHO IS NOT SUBJECT TO TIME LIMITS. An individual who is one of the following is not subject to sub.(1):

(a) A dependent 18 year old as defined under s. DWD 11.24.

(b) A participant enrolled in JOBS pay for performance control group under s. DWD 11.045(4)(b)1.

(c) An 18 or 19 year old learnfare participant under s. DWD 11.195.

Tommy G. Thompson
Governor
Richard C. Wegner
Acting Secretary



Mailing Address:
201 E. Washington Avenue
Madison, WI 53707-7946
Telephone (608) 266-7552

State of Wisconsin Department of Workforce Development

January 6, 1997

Senator Fred Risser
President of the Senate
119 Martin Luther King Blvd., Ste 102
Madison, Wisconsin 53702

Representative Dave Prosser
Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Risser and Representative Prosser:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO. 96-156

RULE NO. HSS 201.135 (DWD 11.135)

RELATING TO: THE 60-MONTH LIFETIME LIMIT ON PARTICIPATION
IN THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS)
PROGRAM OR A WISCONSIN WORKS (W-2) EMPLOYMENT
POSITION OR A COMBINATION THEREOF

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) DWD Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) DWD Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

Also included is a waiver of authority letter. If the respective standing committees have no objections to the rules, we respectfully request that their chairpersons sign the letter and return it as soon as possible.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted

A handwritten signature in black ink that reads "Richard C. Wegner".

Richard C. Wegner
Acting Secretary

Tommy G. Thompson
Governor
Richard C. Wegner
Acting Secretary



Mailing Address:
201 E. Washington Avenue
Madison, WI 53707-7946
Telephone (608) 266-7552

State of Wisconsin Department of Workforce Development

January 6, 1997

Senate Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

Assembly Chief Clerk
Room 402
1 East Main Street
Madison, Wisconsin 53703

TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE RULES AND REPORTS

CLEARINGHOUSE RULE NO. 96-156

RULE NO. HSS 201.135 (DWD 11.135)

RELATING TO: THE 60-MONTH LIFETIME LIMIT ON PARTICIPATION
IN THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS)
PROGRAM OR A WISCONSIN WORKS (W-2) EMPLOYMENT
POSITION OR A COMBINATION THEREOF.

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard C. Wegner".

Richard C. Wegner
Acting Secretary

Tommy G. Thompson
Governor
Richard C. Wegner
Acting Secretary



Mailing Address:
201 E. Washington Avenue
Madison, WI 53707-7946
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State of Wisconsin Department of Workforce Development

Acting Secretary Richard C. Wegner
Department of Workforce Development
Room 401, GEF-1
201 East Washington Avenue
Madison, Wisconsin 53702

Dear Secretary Wegner:

NOTICE OF STANDING COMMITTEE WAIVER OF AUTHORITY

CLEARINGHOUSE RULE NO. 96-156

RULE NO. HSS 201.135 (DWD 11.135)

RELATING TO: THE 60-MONTH LIFETIME LIMIT ON PARTICIPATION
IN THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS)
PROGRAM OR A WISCONSIN WORKS (W-2) EMPLOYMENT
POSITION OR A COMBINATION THEREOF

Pursuant to section 227.19, Stats., notice is given that this legislative standing committee has reviewed the proposed rules and grants permission to promulgate the rules as proposed prior to the committee review period expiration date.

Very truly yours,

CHAIRPERSON

Assembly Committee _____

Date _____

Senate Committee _____

Date _____

Tommy G. Thompson
Governor
Richard C. Wegner
Acting Secretary



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State of Wisconsin Department of Workforce Development

January 13, 1997

Gary Poulson
Assistant Revisor of Statutes
Suite 800
131 W. Wilson St.
Madison, Wisconsin 53703-3233

Dear Mr. Poulson:

NOTIFICATION OF RULE REFERRAL

This letter is to notify you that pursuant to section 227.19, Stats., the Department of Workforce Development has referred:

CLEARINGHOUSE RULE NO. 96-156

RULE NO. HSS 201.135 (DWD 11.135)

RELATING TO: THE 60-MONTH LIFETIME LIMIT ON PARTICIPATION IN THE
JOB OPPORTUNITIES AND BASIC SKILLS (JOBS) PROGRAM
OR A WISCONSIN WORKS (W-2) EMPLOYMENT POSITION
OR A COMBINATION THEREOF

to the presiding officers of the Senate and Assembly of the Legislature for referral to the appropriate standing committees for Legislative review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard C. Wegner'.

Richard C. Wegner
Acting Secretary

cc: Department of Administration (2)

RULE REPORT

Department of Workforce Development

Rule No.: HSS 201.135 (DWD 11.135)

Relating to: THE 60-MONTH LIFETIME LIMIT ON PARTICIPATION IN THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS) PROGRAM OR A WISCONSIN WORKS (W-2) EMPLOYMENT POSITION OR A COMBINATION THEREOF

Agency contact person for substantive questions.

Name Sharon Rickords

Title Policy Analyst

Telephone Number (608) 267-1431

Agency contact person for internal processing.

Name Bonnie Kendell

Title Administrative Rules Manager

Telephone Number (608) 261-6971

FAX Number (608) 261-6968

1. Agency statutory authority under which the agency intends to promulgate the rule(s).

s. 49.145(2)(n), Stats., as created by 1995 Wisconsin Act 289.

2. Citation of federal regulations which require adoption or which are relevant to the proposed rule(s).

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) creates the Temporary Assistance for Needy Families (TANF) program.

3. Citation of court decisions which are applicable to the proposed rule(s).

None.

4. Description of the proposed rule.

Under the Aid to Families with Dependent Children (AFDC) program an individual may apply and be determined eligible for AFDC benefits with no regard to whether the individual has received benefits in the past or the number of months an individual may have already received benefits. Wisconsin Works (W-2), the replacement program for AFDC, as created by 1995 Wisconsin Act 289, includes a provision limiting the amount of time an individual may receive AFDC benefits, W-2 employment position benefits or a combination thereof. Under s.49.145(2)(n), Stats., as created by 1995 Wisconsin Act 289, the total number of months in which an adult has actively participated in the JOBS program under s.49.193, Stats., or has participated in a W-2 employment position or both may not exceed 60 months. The months need not be consecutive. Extensions to the 60 month time limit may be granted only in unusual circumstances in accordance with rules promulgated by the Department. Section 49.141(2)(b), Stats., as created by 1995 Wisconsin Act 289, provides that if a federal waiver is granted or federal legislation is enacted, the Department may begin to implement the W-2 program no sooner than July 1, 1996.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law by President Clinton on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which provides that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult who has received assistance for 60 months, whether consecutive or not, under a state program funded by the TANF block grant. Wisconsin submitted its TANF Block Grant State Plan to the federal Administration for Children and Families on August 22, 1996. The Department will implement time limits October 1, 1996, for AFDC recipients who are actively participating in the Job Opportunities and Basic Skills (JOBS) Training program. Implementation of the time limits is part of the continuing transition from AFDC to the W-2 program. W-2 will be implemented statewide in September 1997.

5. Reason for the proposed rule.

Time limits reinforce the idea that AFDC is a temporary support for families, rather than a long-term source of income. Wisconsin's Work Not Welfare (WNW) demonstration project which is operating in Fond du Lac and Pierce Counties, has shown that time limits create a sense of urgency for families to actively seek alternatives to AFDC. Time limits stress mutual responsibility: government provides support and services designed to promote employment and participants who are able must prepare for and enter employment.

RULES in FINAL DRAFT FORM

Rule No.: HSS 201.135 (DWD 11.135)

Relating to: THE 60-MONTH LIMIT ON PARTICIPATION
IN THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS)
PROGRAM OR A WISCONSIN WORKS (W-2) EMPLOYMENT
POSITION OR A COMBINATION THEREOF

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Workforce Development

CLEARINGHOUSE RULE NO.: 96-156

RULE NO.: HSS 201.135 (DWD 11.135)

RELATING TO: THE 60-MONTH LIFETIME LIMIT ON PARTICIPATION
IN THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS)
PROGRAM OR A WISCONSIN WORKS (W-2) EMPLOYMENT
POSITION OR A COMBINATION THEREOF

Agency contact person for substantive questions.

Name: Sharon Rickords

Title: Policy Analyst

Telephone No. (608) 267-1431

Legislative Council report recommendations accepted in whole.

Yes No

1. Review of statutory authority (s.227.15(2)(a))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

2. Review of rules for form, style and placement in administrative code (s.227.15(2)(c))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

3. Review rules for conflict with or duplication of existing rules (s.227.15(2)(d))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

4. Review rules for adequate references to related statutes, rules and forms (s.227.15(2)(e))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

5. Review language of rules for clarity, grammar, punctuation and plainness (s.227.15(2)(f))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

6. Review rules for potential conflicts with, and comparability to, related federal regulations (s.227.15(2)(g))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

7. Review rules for permit action deadline (s.227.15(2)(h))
 - a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

Responses to Clearinghouse Recommendations:

1. Statutory Authority

a. The rule creates s. HSS 201.135, which provides that, subject to certain exceptions, an individual is not eligible for Aid to Families with Dependent Children (AFDC) if, beginning on the date the individual attained the age of 18 and during which he or she actively participated in the Job Opportunities and Basic Skills (JOBS) program beginning on or after October 1, 1996, he or she has received AFDC for 60 months. The analysis states that 1995 Wisconsin Act 289 "includes a provision limiting the amount of time an individual may receive AFDC, W-2 (Wisconsin Works) employment position benefits or a combination thereof."

However, Act 289 does **not** limit the time an individual may receive AFDC. Rather, Act 289 limits the time an individual is eligible for W-2 employment position benefits. Moreover, while the first paragraph of the proposed order cites three provisions as authority for the rule (ss. 49.145(2)(n) and 49.50(2), Stats., and SECTION 275(3) of Act 289), none of these three provisions provides statutory authority to impose a time limit on AFDC benefits. As for the three provisions cited:

- (1) Section 49.145(2)(n), Stats. (which was created by Act 289 and which is specified as the statute interpreted by the rule), establishes one of the nonfinancial eligibility criteria for **W-2 employment positions and W-2 job access loans** by providing that an individual is eligible for these if the total number of months the individual has actively participated in the JOBS program on or after July 1, 1996, or held a W-2 employment position, or both, does not exceed 60 months. **Section 49.145(2)(n), Stats., does not limit the amount of time an individual is eligible for AFDC.**
- (2) Section 49.50(2), Stats., which was renumbered to s. 49.33(4), Stats., by 1995 Wisconsin Act 27, authorizes the department to promulgate rules for the **administration** of AFDC. It does not authorize the department to impose a time limit on AFDC benefits.
- (3) SECTION 275(3) of Act 289 authorizes the department to promulgate rules for the **administration** of the **W-2 program, not AFDC.**

Neither s. 49.145(2)(n), Stats., nor any other provision of the Wisconsin statutes authorizes imposing a time limit on AFDC benefits, other than for purposes of the Work Not Welfare (WNW) demonstration project. In addition to the fact that there is no statutory authority to impose the proposed time limit on AFDC benefits, the rule would be moot even if it were created. The rule would impose a 60-month time limit on AFDC counting, at the earliest, from October 1, 1996. However, since 1993 Wisconsin Act 99 provides that AFDC will be repealed on January 1, 1999 and since Act 289 provides that the W-2 program will replace AFDC before that date, a person could never receive 60 months of AFDC benefits after October 1, 1996. Thus, the time limit on receipt of AFDC created by the rule could never be imposed with respect to AFDC.

Other problems inherent in the rule also evidence the lack of statutory authority to impose a time limit on AFDC benefits. Examples include the following:

- (1) Section HSS 201.135(2)(intro.) provides that an "agency" may extend the 60-month time limit under unusual circumstances. In s. HSS 201.03(4), "agency" is defined as the county department of social services or human services, or a tribal agency that administers economic support programs. That definition would apply to s. HSS 201.135. However, s. 49.145(2)(n), Stats., provides that it is the **W-2 agency** that determines if unusual circumstances exist that warrant an extension of the 60-month time limit on eligibility for a W-2 employment position.
- (2) Section HSS 201.135(2)(b)1. and 2. refer to "unsubsidized employment." However, that term is not defined in ch. HSS 201. Rather, "unsubsidized employment" is a term defined in s. 49.147(1)(a), Stats., for purposes of the **W-2 program**, not the AFDC program.

b. Section 49.145(2)(n), Stats., provides that participation in the JOBS program begins to count toward the 60-month time limit on eligibility **for W-2 employment positions** beginning on **July 1, 1996**. In contrast, s. HSS 201.135(1) provides that participation in the JOBS program begins to count toward the 60-month time limit on eligibility **for AFDC** beginning on **October 1, 1996**. Again, as discussed above, there is no statutory authority for the time limit on AFDC benefits. However, even if s. 49.145(2)(n), Stats., were interpreted as providing such authority, it does not authorize beginning counting JOBS participation from October 1, 1996. It clearly provides for counting participation in the JOBS program beginning July 1, 1996. There is no statutory authority for using October 1, 1996 as the beginning date for counting months of JOBS participation for any purpose, much less for the purpose of limiting AFDC benefits. (The federal Temporary Assistance for Needy Families (TANF) program, which provides that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult who has received assistance for 60 months under a state program funded by the TANF block grant, does not, in and of itself, amend Wisconsin statutes regarding public assistance benefits available. In particular, it does not amend the date specified in s. 49.145(2)(n), Stats., that is, July 1, 1996, not October 1, 1996.)

Department Response:

The Department agrees that the references to AFDC benefits were not correct. The rule has been redrafted in accordance with the specific limitation language on JOBS program participation and W-2 employment positions in s. 49.145(2)(n).

c. Assuming for the sake of argument that there were statutory authority to impose a time limit on AFDC benefits, what provides statutory authority for the exemption of certain persons as set forth in s. HSS 201.135(5)?

Department Response:

The individuals covered by these exception categories do not meet the rule's definition of "actively participating" in the JOBS program.

2. Form, Style and Placement in Administrative Code

Department Response: Agreed. Rule language changed.

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

Department Response: Agreed. Rule language changed.

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

Department Response: Agreed. Rule language changed.

LRB or Bill No./Adm. Rule No.
s. HSS 201.135 (DWD 11.135)
Amendment No. if Applicable

FISCAL ESTIMATE
DOA-2048 N(R10/94)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

Subject

Time Limited Benefits

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or effects a sum sufficient appropriation.

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenue
- Decrease Existing Revenue

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 - Permissive Mandatory
- 2. Decrease Costs
 - Permissive Mandatory

- 3. Increase Revenue
 - Permissive Mandatory
- 4. Decrease Revenue
 - Permissive Mandatory

5. Type of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This is the emergency rule to implement the time limits on benefits for recipients of Aid to Families with Dependent Children (AFDC) who are participating in the Job Opportunities and Basic Skills (JOBS) program, under s.49.145(2)(n), Stats., as created by 1995 Wisconsin Act 289.

All costs to the Department and local governments for operation of the time limits on benefits were included in 1995 Wisconsin Act 289. There are no additional costs for state government or local governments from promulgation of the administrative rule to implement time limits on benefits.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
DWD/DES Bonnie Kendall 1-8871

Authorized Signature/Telephone No.
[Signature] 267-2179

Date
9-20-96

FISCAL ESTIMATE WORKSHEET

1995 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R1094)

◆ ORIGINAL ◆ UPDATED
◆ CORRECTED ◆ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
S. HSS 201.135

Amendment No.

Subject (DWD 11.135)

Time Limited Benefits

L One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:		Annualized Fiscal Impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations - Other Costs			.
Local Assistance			.
Aids to Individuals or Organizations			.
TOTAL State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			.
PRO/PRS			.
SEG/SEG-S			.
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			.
FED			.
PRO/PRS			.
SEG/SEG-S			.
TOTAL State Revenues		\$	\$ -

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ SEE TEXT

\$ SEE TEXT

NET CHANGE IN REVENUES

\$ SEE TEXT

\$ SEE TEXT

Agency Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

DWD/DES Bonnie Kendall 1-8871

KilcW 267-2978 | 9-20-9

CHAPTER DWD 11

RULE RELATING TO THE 60-MONTH LIFETIME LIMIT ON PARTICIPATION IN THE JOB OPPORTUNITIES AND BASIC SKILLS (JOBS) PROGRAM OR A WISCONSIN WORKS (W-2) EMPLOYMENT POSITION OR A COMBINATION THEREOF

Pursuant to the authority vested in the Wisconsin Department of Workforce Development (DWD) by s. 49.145(2)(n), Stats., the Department proposes an order to renumber ch. HSS 201 to DWD 11 and to create DWD 11.135, relating to circumstances under which the 60-month lifetime limit on participation in the Job Opportunities and Basic Skills (JOBS) program or a Wisconsin Works employment position or a combination thereof may be extended.

Analysis

(1) **Background.** Under the Aid to Families with Dependent Children (AFDC) program an individual may apply and be determined eligible for AFDC benefits with no regard to whether the individual has received benefits in the past or the number of months an individual may have already received benefits. Wisconsin Works (W-2), the replacement program for AFDC, as created by 1995 Wisconsin Act 289, includes a provision limiting the amount of time an individual may receive AFDC benefits, W-2 employment position benefits or a combination thereof. Under s. 49.145(2)(n), Stats., as created by 1995 Wisconsin Act 289, the total number of months in which an adult has actively participated in the Job Opportunities and Basic Skills (JOBS) program under s. 49.193, Stats., or has participated in a W-2 employment position or both may not exceed 60 months. The months need not be consecutive. Extensions to the 60-month lifetime limit may be granted only in unusual circumstances in accordance with rules promulgated by the Department. Section 49.141(2)(b), Stats., as created by 1995 Wisconsin Act 289, provides that if a federal waiver is granted or federal legislation is enacted, the Department may begin to implement the W-2 program no sooner than July 1, 1996. Participation in JOBS under s. 49.193, Stats., begins to

count toward the 60-month lifetime limit beginning on October 1, 1996.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) was signed into law by President Clinton on August 22, 1996. It creates the Temporary Assistance for Needy Families (TANF) program which provides that a state may not use any part of the TANF grant to provide assistance to a family that includes an adult who has received assistance for 60 months, whether consecutive or not, under a state program funded by the TANF block grant. Wisconsin submitted its TANF Block Grant State Plan to the federal Administration for Children and Families on August 22, 1996. The Department implemented time limits on October 1, 1996, for AFDC recipients who are actively participating in the Job Opportunities and Basic Skills (JOBS) program. Implementation of the time limits is part of the continuing transition from AFDC to the W-2 program. W-2 will be implemented statewide in September 1997.

Time limits reinforce the idea that AFDC is a temporary support for families, rather than a long-term source of income. Wisconsin's Work Not Welfare (WNW) demonstration project which is operating in Fond du Lac and Pierce Counties, has shown that time limits create a sense of urgency for families to actively seek alternatives to AFDC. Time limits stress mutual responsibility: government provides support and services designed to promote employment and participants who are able must prepare for and enter employment.

The rule defines the term "actively participating" in the JOBS program and includes criteria a county or tribal economic support agency would use to determine whether an extension of the 60-month lifetime limit should be granted. The Department retains the right to review an economic support agency's decisions related to extensions.

(2) Authority for rule. s. 49.145(2)(n), Stats., establishes a lifetime limit of 60 months, beginning on an individual's 18th birthday, on the time that an individual may participate in the Job Opportunities and Basic Skills (JOBS) program under s. 49.193, Stats., or the Wisconsin Works (W-2) program under ss. 49.141 to 49.161, Stats. or a

combination thereof. In addition, s. 49.145(2)(n) provides that a W-2 agency may extend the time limit only if the agency determines, "in accordance with rules promulgated by the department, that unusual circumstances exist that warrant an extension of the participation period."

(3) **Unusual circumstances.** This rule establishes the following as unusual circumstances which may serve as the basis for the determination by a W-2 agency that the 60-month lifetime limit should be extended for a W-2 participant:

(a) A participant is unable to work because of personal disability or incapacity, or because he or she is needed to provide home care for a severely incapacitated member of his or her household.

(b) A participant has significant limitations to employment, such as low achievement ability, learning disability, severe emotional or family problems, or inability to find employment because of local labor market conditions.

(4) **Department review.** The rule provides that DWD may review and reverse the decision of a W-2 agency to extend a participant's eligibility beyond the 60-month lifetime limit.

(5) **Counting sanction months.** The rule provides that a month during which a JOBS or W-2 participant receives no payment or a reduced payment due to a sanction does count as a month of participation in JOBS or W-2 for the purposes of the 60-month lifetime limit.

(6) **Exceptions.** The rule provides that the 60-month lifetime limit does not apply to a dependent 18 year old, an 18 or 19 year old Learnfare participant, or a JOBS participant who is enrolled in a "control group" under the Pay for Performance program.

This is the permanent rule for time limited benefits. This rule replaces the emergency rule which was effective on October 1, 1996.

PROPOSED ORDER

Pursuant to the authority vested in the Department of Workforce Development by s. 49.145(2)(n), Stats., as created by 1995 Wisconsin Act 289, s. 49.33(4), Stats., and s.275(3) of 1995 Wisconsin Act 289, the Department of Workforce Development hereby creates a rule interpreting

s. 49.145(2)(n), as created by 1995 Wisconsin Act 289, as follows:

SECTION 1. ch. HSS 201 is renumbered ch. DWD 11.

SECTION 2. DWD 11.135 is created to read:

DWD 11.135 Time Limits. (1) **ELIGIBILITY.** Except as provided in sub. (2) or (5), an individual is not eligible for participation in the job opportunities and basic skills (JOBS) program or in a Wisconsin works (W-2) employment position under s. 49.147(3) to (5), Stats., if, beginning on the date the individual attained the age of 18, he or she has actively participated in the job opportunities and basic skills program or has participated in a Wisconsin works employment position, or both, for 60 months. The months need not be consecutive. Participation in the JOBS program begins to count toward the 60-month lifetime limit beginning on October 1, 1996. In this subsection, "actively participated" means that the individual was enrolled in the JOBS program under s. HSS 206.07.

(2) **ADDITIONAL MONTHS OF ELIGIBILITY.** An agency may extend the 60-month lifetime limit only under unusual circumstances. In this subsection, "unusual circumstances" means any of the following:

(a) A JOBS program participant is unable to work because of personal disability or incapacity, as defined under s. HSS 207.11(1)(a), or is needed as determined under s. DWD 11.19(1)(i) to remain at home to care for another member of the household whose incapacity is so severe that without constant in-home care provided by the JOBS program participant, the incapacitated AFDC group member's health and well-being would be significantly affected.

(b) A JOBS program participant has significant limitations to employment such as:

1. A JOBS program participant's low achievement ability, learning disability or emotional problems of such severity that they prevent the individual from obtaining or retaining unsubsidized employment, but are not sufficient to meet the criteria for eligibility for SSI under 42 USC 1381

to 1381d or social security disability insurance under 42 USC 401 to 433.

2. Family problems of such severity that they prevent the JOBS participant from obtaining or retaining unsubsidized employment.

(c) The adult JOBS participant has made all appropriate efforts to find work and is unable to find employment because local labor market conditions preclude a reasonable job opportunity. In this paragraph, "reasonable job opportunity" means a job that pays the federal minimum wage prescribed in 29 USC 206(a)1, and meets the conditions under 45 CFR Part 251.

(3) DEPARTMENT RESPONSIBILITY. The department may review an agency's decision to extend eligibility beyond the 60-month lifetime limit and may overturn an agency's decision.

(4) DETERMINATION OF PARTICIPATION. For the purpose of determining the number of months of participation under s. 49.145(2)(n), Stats., and this section, a participant in the JOBS program or a participant in a W-2 employment position under s. 49.147(3) to (5), Stats., shall be considered to have actively participated in a month in which, as a result of a sanction, a reduced payment or no payment is made to the participant.

(5) WHO IS NOT SUBJECT TO TIME LIMITS. An individual who is one of the following is not subject to sub.(1):

(a) A dependent 18 year old as defined under s. DWD 11.24.

(b) A participant enrolled in JOBS pay for performance control group under s. DWD 11.045(4)(b)1.

(c) An 18 or 19 year old learnfare participant under s. DWD 11.195.

PUBLIC HEARING COMMENT & AGENCY RESPONSE
 DEPARTMENT OF WORKFORCE DEVELOPMENT
 DIVISION OF ECONOMIC SUPPORT

RULE NUMBER: HSS 201.135

HEARING LOCATION: 1 W. Wilson St., Madison--Rm. B139

RELATED TO: Time Limits

HEARING DATE: November 19, 1996

Commenting		For	Exh.	Presenter,	Comments/Recommendations	Agency Response
Sup.	In	Info.	No.	Group Represented, City & State		
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> 1	Carol W. Medaris Project Attorney WI Council on Children and Families	Please see narrative attached.	Please see narrative attached.
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> 2	Sandra Palmgren Curative Rehab. Serv.		
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> 3	Margaret Wamugi Urban League of Greater Madison		
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> 4	Mary Garrette Urban League of Greater Madison		
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> 5	Wanda Bowers DWD/DES/BWI		
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/> 6	Mary Mrochinski Sen. Moore's Office		
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SUMMARY OF PUBLIC HEARING

Creation of DHSS s. 201.135, relating to time limits on benefits for recipients of Aid to Families with Dependent Children (AFDC) who are actively participating in the Job Opportunities and Basic Skills (JOBS) program.

A public hearing was held in Madison on November 19, 1996. Staff in attendance were:

Bonnie Kendell, Hearing Officer, Division of Economic Support and Sharon Rickords, Resource Person, Division of Economic Support.

The hearing record was left open until November 26, 1996, for receipt of written comments.

Registered	5
Observation	5
Oral presentation	0
Written comments	1

Written comments:

1. Carol W. Medaris, Project Attorney, Wisconsin Council on Children and Families, 16 N. Carroll Street, Suite 420, Madison, Wisconsin 53703

Observation only at public hearing:

2. Sandra Palmgren, Curative Rehabilitation Services, 1000 N. 92nd St., Milwaukee, Wisconsin 53226
3. Margaret Wamugi, Urban League of Greater Madison, 151 E. Gorham St., Madison, Wisconsin 53703
4. Mary Garrette, Urban League of Greater Madison, 151 E. Gorham St., Madison, Wisconsin 53703
5. Wanda Bowers, Department of Workforce Development, Division of Economic Support, Bureau of Welfare Initiatives, Madison
6. Mary Mrochinski, Legislative Aide, Sen. Moore's Office, State Capitol, P. O. Box 7882, Madison, Wisconsin 53707-7882

The comments received on the proposed rule and the Department's responses to the comments are as follows:

1. Carol W. Medaris

A. Comment: In HSS 201.135(1), the definition of "actively participated" as meaning simply "enrolled" is neither consistent with the common meaning of the two terms nor legislative intent. Assembly Bill 591, as initially introduced on October 2, 1995, included in the 60-month time limit those individuals where the total months "in which the individual has participated in the Job Opportunities and Basic Skills program under s. 49.193 . . . does not exceed 60 months." (s. 49.145(2)(n), Stats., LRB-4118/1). By the time Assembly Substitute Amendment 2 was offered by the Committee on Welfare Reform on November 28, 1995, the language had been changed to the total number of months "in which the individual has actively participated" in JOBS. (s. 49.145(2)(n), Stats., LRBs0373/1). That latter wording prevailed and is what passed the Legislature and was signed by the governor in Wisconsin Act 289.

Even if the word "participated" could reasonably be interpreted to mean "enrolled," so as to make months of "enrollment," without more, count toward the 60-month limit, urging such an interpretation for "active participation" clearly ignores a deliberate legislative attempt not to count months of non-active participation. The Department therefore exceeds its authority to include those who are "enrolled" but not "actively participating" in the 60-month rule limits.

Nor is it consistent with the policy behind time limits. The idea is not to cast off those who have not received the help of the JOBS program, but rather to make ineligible those who have had the full advantage of the JOBS work-readiness activities. Thus the limit does not apply to those who are otherwise exempt from participation. Similarly, it should not apply to those who are enrolled, but not yet actively participating either because of a delay in finding an appropriate placement, a delay while an exemption is being investigated, or some other reason, and the Legislature did not intend for the limits to be applied to them.

Department Response: Under the Pay for Performance (PFP) and Work Not Welfare (WNW) demonstrations, all Job Opportunities

and Basic Skills (JOBS) program participants who are currently enrolled must be engaged in work or training activities. Therefore, enrolled participants are active JOBS participants. Participants enrolled in JOBS under the PFP control group are not subject to the 60-month lifetime limit.

In rare circumstances, adjustments may need to be made to the months used by an enrolled JOBS participant if the individual is placed in any JOBS inactive status without any JOBS reportable activity during that month. One month will be subtracted from the months used for each month that this occurs.

B. Comment: In HSS 201.135(2)(a), the extension of the time limit to those caring for an incapacitated household member is so unreasonably narrow as to be pointless. It requires a finding that the household member's incapacity be "so severe that without constant in-home care provided by the JOBS program participant, the incapacitated AFDC group member's health and well-being would be significantly affected; . . ."

The whole point of these exemptions is to protect those unable to work a sufficient amount to support their families. Unless someone is able to work at a job paying a substantial amount, this will require a full-time or close to full-time job. Clearly one who is able to leave an incapacitated household member alone, or in someone else's care, for a few hours a day is still unable to support a family with an outside job. Yet this rule, as worded, would not allow an extension to the 60-month time limit in such cases.

The rule should be reworded to provide for extensions when the need for care of an incapacitated household member by the JOBS participant is such that a full-time, outside job (or one yielding equivalent earnings) is not possible. Any other definition increases the burdens for the most vulnerable of Wisconsin's poor families.

Department Response: No change. This is a reasonable standard in combination with all the other provisions in HSS 201.135(2) for consideration of extending benefits beyond the initial eligibility period. The administrative rules for the Work Not Welfare program, ch. HSS 207, include the same provisions for extensions.