

DWD 55

# State of Wisconsin Department of Workforce Development

## DAY CARE CERTIFICATION

The Wisconsin Department of Workforce Development proposes an order to renumber HFS 55.55 to 55.62; amend DWD 55.02(4) and (22), 55.03(2)(c), 55.04(2)(a) and (b), (3)(c), (d)1. and 2., (5)(a) and (b), (7)(a) and (b)1. and (8); repeal and recreate DWD 55.02(1) and 55.05; and create DWD 55.02(3m), (5m) and (17m), 55.04(9), 55.10 and 55.11, relating to background checks for persons involved with certified day care.

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### Finding of Emergency

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

Beginning on October 1, 1998, recently enacted provisions in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

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### Analysis

**Authority for rule.** sec. 49.155(1m)(d), Stats.

**Statute interpreted.** sec. 49.155(1m)(d), Stats.

In accordance with the statute cited above and administrative rules under consideration by the Department of Health and Family Services under sec. 48.685, Stats., the Department of Workforce Development proposes this rule to place into effect requirements for background reviews and decisions on day care certification, employment, contracting, and nonclient residents living in the provider's home. The following provisions are added to the DWD rule on day care certification:

**Requirements for background information.** Effective October 1, 1998, a completed background information disclosure form must be submitted to the county or tribal social or human services agency by any new prospective certified day care provider, prospective employe, prospective contractor, or prospective nonclient resident in the provider's home. The forms must be completed every four years. This requirement applies to existing providers, employes, persons

under contract and nonclient residents effective October 1, 1999. In addition to reviewing the disclosure forms, the agency is required to obtain background information from the Department of Justice and the Department of Health and Family Services.

**Regulatory approval and client access standards.** For persons who have been convicted of or who have committed serious crimes, acts or offenses, the rule incorporates DHFS tables which list which crimes are “nonrehabilitative,” which means that the bar on employment may not be lifted by the agency after a rehabilitation review process. The rule also specifies the eligibility factors for a person who may be entitled to seek a rehabilitation review, lists the factors that the agency should consider in deciding on the review, and specifies the procedure to be followed. A person whose rehabilitation review request is approved may be required to comply with specific conditions and limitations, and a rehabilitation approval may be rescinded if those conditions are violated. An agency is not required to bar an existing entity, employe, person under contract or nonclient resident who meets the eligibility requirements and has submitted a rehabilitation review request that has not been decided by October 1, 1999, until the agency has completed its consideration of the rehabilitation review request.

SECTION 1. HFS 55.55 to 55.62 are renumbered to DWD 55.01 to 55.08.

SECTION 2. DWD 55.02(1) is repealed and recreated to read:

DWD 55.02(1) “Agency” has the same meaning as “county agency.”

SECTION 3. DWD 55.02(3m) is created to read:

DWD 55.02(3m) “Client” means a child who receives direct care from an entity.

SECTION 4. DWD 55.02(4) is amended to read:

DWD 55.02(4) “County agency” means a county department of social services established under s. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.23, Stats., and includes a tribal agency.

SECTION 5. DWD 55.02(5m) is created to read:

DWD 55.02(5m) “Entity” means a day care provider that is certified under s. 48.65, Stats.

SECTION 6. DWD 55.02(17m) is created to read:

DWD 55.02(17m) “Regulatory approval” means issuance of a certification continuation or renewal of a certification.

SECTION 7. DWD 55.02(22) is amended to read:

DWD 55.02(22) "Wisconsin works participant" or "W-2 participant" means an individual participating in the Wisconsin works program ~~for families with dependent children administered~~ under ss. 49.141 to 49.161, Stats.

SECTION 8. DWD 55.03(2)(c) is amended to read:

DWD 55.03(2)(c) The care permits a ~~Job Opportunities and Basic Skills (JOBS) program enrollee Wisconsin works participant~~ to attend a JOBS program activity ~~prior to the development of an employability plan under s. 49.193 (4), Stats.,~~ approved by a JOBS administrative W-2 agency.

SECTION 9. DWD 55.04(2)(a) and (b), (3)(c), (d)1. and 2., (5)(a) and (b), (7)(a) and (b)1., and (8) are amended to read:

DWD 55.04(2)(a) Family day care and in-home providers are required to meet the standards under s. ~~HFS 55.61~~ DWD 55.08 and may care for preschool children or school-age children or a combination of preschool and school-age children consistent with Table ~~55.61 (6)~~ 55.08(6).

(b) School-age day care programs are required to meet the standards under s. ~~HFS 55.62~~ DWD 55.09.

(3)(c) The applicant shall ~~submit a completed notarized background character verification form for each provider, employe, prospective employe, substitute or adult living in the provider's home~~ comply with the background information requirements of s. DWD 55.09.

(3)(d)1. If the application is for certification under sub. (2)(a), the county or tribal agency shall review the application for compliance with standards under s. ~~HFS 55.61~~ DWD 55.08 prior to issuing a certificate.

2. If the application is for certification under sub. (2)(b), the county or tribal agency shall refer the application to a licensing representative in the department of health and family services regional office. The licensing representative shall determine whether the applicant is in compliance with all standards under s. ~~HFS 55.62~~ DWD 55.09 and report back to the county or tribal agency. The county or tribal agency may issue a certificate based on the licensing representative's report.

(5)(a) Level I (regular) certification may be issued only after the provider has demonstrated compliance with all certification standards including training. Level I (regular) certification shall be for a period of 2 years and shall be renewed upon application if the provider continues to comply with the certification standards under s. ~~HFS 55.61 or 55.62~~ DWD 55.08 or 55.09. A provider is not eligible to be issued Level I (regular) certification if the provider is related to all the children in the provider's care.

(b) Level II (provisional) certification may be issued only after the provider has demonstrated compliance with all certification standards under s. ~~HFS 55.61~~ DWD 55.08, except standards for training under s. ~~HFS 55.61 (1)(b)~~ DWD 55.08(1)(b). Level II (provisional) certification shall be for a period of 2 years and shall be renewed upon application if the provider continues to comply with the certification standards, except standards for training under s. ~~HFS 55.61 (1)(b)~~ DWD 55.08(1)(b).

(7)(a) County and tribal agencies shall maintain records demonstrating provider compliance with s. ~~HFS 55.61(1)~~ DWD 55.08(1).

(b)1. County and tribal agencies shall help assure provider compliance with s. ~~HFS 55.61 (2) to (12)~~ DWD 55.08 (2) to (12) in accordance with this paragraph.

(8) A county or tribal agency may grant an exception to any standard in s. ~~HFS 55.61 or 55.62~~ DWD 55.08 or 55.09 if the county or tribal agency determines that an alternative means

meets the intent of the requirement, except for rules related to criminal background investigation required under s. ~~48.651-(2)~~ 48.685, Stats.

SECTION 10. DWD 55.04(9) is created to read:

DWD 55.04(9) CERTIFICATION DECISION AFTER BACKGROUND REVIEW. (a)

The county or tribal agency, upon review of the information provided on a department background information disclosure form of a person, shall not certify a person until there is a satisfactory review of the person's criminal background and other information, and shall not certify the person if the person has been convicted of, or has pending against him or her a charge of a serious crime, unless that person can demonstrate that he or she has been rehabilitated. No person who has been convicted of or has committed or has been adjudicated delinquent, on or after his or her 12th birthday, of any of the following acts or offenses may be permitted to demonstrate that he or she has been rehabilitated:

1. First degree intentional homicide under s. 940.01, Stats.
2. First degree sexual assault under s. 940.225 (1), Stats.
3. First degree sexual assault of a child under s. 948.02 )(1), Stats.
4. Second degree sexual assault of a child under s. 948.02 (2), Stats., if the person was, at the time of the sexual contact intercourse, more than 4 years older than the child with whom the person had the sexual contact or sexual intercourse.
5. Repeated acts of sexual assault of the same child under s. 948.025, Stats., if the child had not attained the age of 13, or if the child had attained the age of 13 and had not attained the age of 16 and the person was, at the time of the sexual contact or sexual intercourse, more than 4 years older than the child with whom the person had the sexual contact or sexual intercourse.
6. A crime, act or offense identified by the department which precludes a showing of rehabilitation as listed in Table DWD 55.

(b) If a county agency upon review of a department background information disclosure form of a person and any other information that may be available, finds that the person has not committed a serious crime, act or offense, the county agency may grant certification for not more than 60 days pending receipt and satisfactory review of the criminal background and other required information. Where less serious crimes, acts, or offenses are indicated on the department background information form, the county agency shall ensure appropriate precautionary measures are taken to ensure that clients are protected. This may mean delaying issuance of certification.

SECTION 11. DWD 55.05 is repealed and recreated to read:

**DWD 55.05 Regulatory approval and client access standards. (1) SERIOUS CRIMES, ACTS OR OFFENSES.** A county agency may not certify or renew certification and continue payment for care to a person if the county agency knows or should have known that:

- (a) The person has been convicted of a serious crime.
- (b) The person has pending against him or her a charge for a serious crime.
- (c) A unit of government or a state agency has made a finding that the person has abused or neglected any client or misappropriated the property of any client.
- (d) That a determination has been made under s. 48.981(3)(c)4., Stats., that the person has abused or neglected a child.
- (e) That, in the case of a position for which the person must be credentialed by the department of regulation and licensing, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

(2) REHABILITATION. A county agency may, as applicable, remove a bar imposed under sub. (1), if that person is eligible for rehabilitation review and has received rehabilitation approval.

(3) **NONREHABILITATIVE CRIMES.** No person who has been convicted of any of the following offenses or has committed any of the following acts or offenses may be permitted to demonstrate to an agency that he or she has been rehabilitated:

(a) First degree intentional homicide under s. 940.01, Stats.

(b) First degree sexual assault under s. 940.225(1), Stats.

(c) First degree sexual assault of a child under s. 948.02(1), Stats.

(d) Second degree sexual assault of a child under s. 948.02(2), Stats., if the person was, at the time of the sexual contact or sexual intercourse, more than four years older than the child with whom the person had the sexual contact or sexual intercourse.

(e) Repeated acts of sexual assault of the same child under s. 948.025, Stats., if the child had not attained the age of 13, or if the child had attained the age of 13 and had not attained the age of 16 and the person was, at the time of the sexual contact or sexual intercourse, more than four years older than the child with whom the person had the sexual contact or sexual intercourse.

(f) A crime, act or offense identified by the department which precludes a showing of rehabilitation as listed in Table DWD 55.

(4) **REHABILITATION OF SERIOUS CRIMES.** A person who has not committed a serious crime identified under sub. (3) may seek rehabilitation review for other serious crimes, acts, or offenses identified as rehabilitative in Table DWD 55, including crimes or acts involving misappropriation of property or abuse or neglect of a client.

(a) *Request for rehabilitation review.* A person who is refused regulatory approval by an agency, or who is refused employment or permission to reside as a nonclient at an entity, because of a crime, act, or offense identified as a rehabilitative crime in Table DWD 55, shall be offered by the agency and may request a rehabilitation review. A person eligible for rehabilitation review and who wishes to seek rehabilitation review shall make a written request to a county department on a

department rehabilitation review application request form and show, with the burden of proof by clear and convincing evidence, that he or she is rehabilitated.

(b) *Eligibility.* A person barred for any reason listed in sub. (1) by a county department from operating an entity is eligible to submit a rehabilitation review request to lift the bar if:

1. The person has not committed a crime for which rehabilitation is prohibited under sub. (3).
2. The person does not have, through a background information check, a pending charge for a serious crime, act, or offense under sub. (1) and (3) or other crime, act, or offense that substantially relates to the care of a client.
3. The person is not subject to a court order, injunction or temporary restraining order relating to the crime which is the basis for the review request.
4. The person is not a registered sex offender.
5. The person is not currently serving a commitment or sentence.
6. The person is not currently under the supervision of the department of corrections or on probation or parole.
7. The person has not requested a rehabilitation review until at least 1 year after the end of probation or parole.
8. The person has not requested a rehabilitation review for a similar type of regulatory approval or job function or activity within the last year.

(c) *Specific situations.* A person who is determined eligible and desires rehabilitation review is permitted rehabilitation review where any one or more of the following apply:

1. The person has committed a crime identified by the department under sub. (1) for which rehabilitation review is required and the person does not have a pending charge for any criminal or municipal ordinance offense, including traffic other than parking or speeding.



2. A unit of government or a state agency has made a finding that the person has abused or neglected a client or misappropriated the property of a client.

3. A determination has been made under s. 48.981(3)(c)4., that the person has abused or neglected a child.

(d) *Review procedures.* Upon receipt of a rehabilitation application review request, the agency shall appoint a review panel of 2 to 5 persons to inquire, gather, and review as necessary, any other relevant information from agencies and persons identified in the written application. The panel shall give the applicant requester an opportunity to appear before the review panel to provide answers to questions the review panel may have that may be needed in rendering a rehabilitation decision.

(e) *Rehabilitation decision.* The agency review panel shall render a decision as to whether the information provided establishes the applicant's rehabilitation by clear and convincing evidence based upon, but not limited to, the following guidelines and as otherwise established in the department's review procedures:

1. Favorable personal reference checks and favorable comments from other persons and agencies identified in the written application of the requester.
2. Proof of successful completion of parole, probation, incarceration or work release privileges.
3. Proof that the person is free from encounters with law enforcement or civil enforcement agencies.
4. Aggravating or mitigating circumstances in relation to the reason or reasons for the crime, act, or offense.
5. Other evidence of rehabilitation, such as public or community service, volunteer work, or recognition by public or private authorities for accomplishments or efforts.

6. Favorable statements from therapists, counselors and other professionals.
7. Attempts or efforts at restitution.
8. Victim's impact statement.
9. Ability to remain employed, ability to develop positive social interaction, and increased independence or autonomy of daily living.
10. No information to indicate that the person has any pending or existing arrest warrants or civil judgments or other legal enforcement actions.

(f) *Rehabilitation review decision response.* 1. The agency's review panel shall render a written decision in accordance with the criteria used to make a rehabilitation decision to the requester within 90 working days of the requester's submitted written application request for rehabilitation review.

2. If the decision is an approval, it shall describe the scope of the rehabilitation approval with any conditions or limitations that may be prescribed. For example, the decision shall state whether the approval is only for certain job functions, activities, or arrangements, and for what type of entity, or, if a regulatory approval, for what type of regulatory entity and any conditions or limitations that may be prescribed for certification.

3. If the decision is not to approve the rehabilitation request, the agency review panel's written response must explain the reasons for nonapproval and inform the applicant that he or she has the right to file an appeal on the decision as follows:

a. Any person who is permitted but fails to demonstrate to a county department that he or she has been rehabilitated may appeal to the director of the county department or designee.

b. Any person adversely affected by a decision of the director or designee has the right to appeal the decision under ch. 68, Stats.

4. The agency's review panel shall maintain on file the rehabilitation review request application and all materials requested in that application and any other materials or information or notes obtained as a part of the rehabilitation review decision along with a copy of the written decision along with any decisions from filed appeals that may result.

(g) *Rehabilitation approval compliance.* A person whose rehabilitation request review application has been approved shall comply with all conditions and limitations that are included in the approval. The applicable approving agency or the department may deny or rescind a rehabilitation approval of a person when the agency has knowledge that the person has done any one or more of the following:

1. The person has failed to comply with the conditions or limitations of an approval.
2. The person is no longer eligible for regulatory approval or employment, contracting with or residency at an entity under sub. (1).
3. The person has knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that could have affected the review panel's decision to approve the person's rehabilitation.

(h) *Violation of rehabilitation approval.* An entity or agency that is aware of any person who has violated a rehabilitation approval for a reason listed in par. (g) shall inform the agency that approved the person's rehabilitation. The approving agency shall consider whether the new information received is valid and represents a risk of harm to the client and, if so, it shall immediately rescind the rehabilitation approval, thereby reinstating the person's bar as applicable to regulatory approval. If the new information does not represent a risk of harm to a client, the agency shall work in concert with the entity and consider as necessary any measures to mitigate the situation such as appropriate limitations on the certificate. A person whose rehabilitation

approval is withdrawn under this paragraph may file an appeal of the decision as described in par.

(f).

(i) *Reporting.* Each county department shall maintain its records concerning each person who is denied a certificate. The agency shall send a completed copy of the department's required reporting form to the subunit of the department of health and family services responsible for collecting such information for all rehabilitation review decisions. Also, any rehabilitation approval withdrawn resulting in a bar by the approving agency shall be immediately reported to the subunit of the department of health and family services responsible for collecting information.

**NOTE: The address of the subunit of the department on where to send information on a denial of a license is: (to be determined by DHFS)**

(j) *Scope of agency rehabilitation approval.* 1. An agency may only grant rehabilitation approval within the scope of its regulatory authority and within the scope of client access or the job activity or function specified in the rehabilitation review request application. An approval is not transferable outside the scope of the agency's regulatory authority or to other job functions than those specified in the rehabilitation approval by that agency.

**NOTE: For example, an approval to be a certified provider by one county is not, unless approved by the other county, transferable to the other county. As another example, rehabilitation approval for day care certification is not transferable to a child caring institution or to a hospital or nursing home.**

2. A rehabilitation review application request approval regarding regulatory approval by an agency is transferable to another agency only with the approval of the receiving agency and if the job function, duties and circumstances approved in the rehabilitation approval are the same or similar when moving from one entity to another of the same type. If the regulatory agency is the department of health and family services, it shall be the receiving regulatory subunit of the department that will decide whether a rehabilitation approval is transferable to that regulatory subunit.

(k) *Applicant request to transfer rehabilitation approval.* Upon notification on the department's background information disclosure form that an applicant has had a rehabilitation review, an agency shall request a copy of the rehabilitation decision from the applicant. If the applicant previously received an approval in response to a rehabilitation review, the agency shall determine if the approval is acceptable for the regulatory approval, job functions, or activities for which the applicant is currently applying. If the applicant did not previously receive an approval, the agency shall determine whether the applicant is eligible for and may seek another rehabilitation review and inform the applicant. The agency shall verify with the subunit of the department of health and family services responsible for gathering such information, whether a prospective entity, employe, or nonclient resident has ever had a rehabilitation review and, if so, the date and status of that review and establish whether any new reason exists for requiring a rehabilitation review.

(5) CRIMES THAT SUBSTANTIALLY RELATE TO THE CARE OF A CLIENT. (a)

*Grounds for decision.* A county agency may bar a person from certification any time the agency believes that any other crime, act, or offense otherwise not identified under sub. (1) and committed by a provider, employe, or nonclient resident where the person was convicted of or adjudicated delinquent on or after his or her 12th birthday, is considered to be substantially related to the care of a client or the activities and operation at a child care program.

(b) *Substantially related criteria.* The agency shall review the following criteria in making decisions under this subsection.

1. The job. The nature and scope of the job's client contact, discretionary authority and degree of independence in judgment relating to decisions or actions which affect the care of clients, the opportunity the job presents for the commission of similar offenses, the extent to

which acceptable job performance requires the trust and confidence of clients and their parent or guardian, the amount and type of supervision received in the job.

2. The offense. Whether intent is an element of the offense, whether the elements or circumstances of the offense are substantially related to the job duties, the pattern of offenses, the extent to which the offense relates to vulnerable clients, whether the crime involves violence or threat of violence, or whether the crime is of a sexual nature.

3. The individual. The number and type of offenses for which the individual has been convicted, the length of time between the convictions and the employment decision, the individual's employment history, including references if available, the individual's participation in or completion of pertinent programs of a rehabilitative nature, the individual's probation or parole status, the individual's ability to perform or continue to perform the job consistent with the safe and efficient operation of the program, the confidence of the clients served, including their parents and guardians, and the age of the individual on the date of conviction.

(6) LESS SERIOUS CRIMES, ACTS OR OFFENSES. (a) *Grounds for decision.* A county agency may impose less stringent measures other than a bar on regulatory approval, or barring employment, nonclient residency, or other similar type of association by an entity where less serious crimes, acts, or offenses committed by a person are found to be substantially related to the care of a client or the activities and operations of a child care program. A county agency shall impose as applicable and appropriate, special precautionary measures on persons seeking certification or persons having contact with clients who are either employed, nonclient residents, or have any other similar type of association with the entity if that person has committed a less serious crime.

(b) *Conditions which may be imposed.* When taking action under this subsection, a county agency may adopt precautionary measures including but not limited to the following:

1. Conditions such as prohibitions on certain activities or functions, no repeat of crimes, acts or offenses, submission of necessary and relevant statements from therapists or counselors on the person being fit and qualified for the regulatory function or job task where appropriate, prescribed limited contact or supervised contact with clients.

2. Closer supervision or special supervision arrangements, such as partnering with another person not having any background history problems.

3. Medication monitoring.

4. Prior evaluation and recommendations from appropriate professionals, such as psychiatrists, or psychologists.

5. Restrictions to certain on-premises activities, locations or time periods.

6. Ban on transporting clients.

7. Periodic alcohol or drug testing.

(7) OTHER STANDARDS OF REVIEW. The county agency may deny, suspend, revoke or refuse to renew certification and discontinue payment for care if any of the following apply:

(a) The provider is not in compliance with certification standards under s. DWD 55.08 or 55.09, as appropriate.

(b) The provider's references or other community information does not support the provider's declaration that he or she is able to provide an acceptable level of child care.

(c) The county agency determines there is danger to the health, safety or welfare of the children in care.

SECTION 12. DWD 55.10 is created to read:

**DWD 55.10 Background information requirements. (1) NEW PROVIDERS.**

Effective October 1, 1998, this subsection applies to a prospective certified provider, a

prospective employe, including a prospective substitute employe, a prospective person under contract, and a prospective nonclient resident living in the provider's home who is 12 years of age or older.

(a) A person described in sub. (1)(intro.) shall submit a completed background information disclosure form every four years to the county agency.

(b) The county agency shall obtain criminal and other background history for each person described in sub. (1)(intro.)

(2) **EXISTING PROVIDERS.** Effective October 1, 1999, this subsection applies to a certified provider, employe, person under contract, or nonclient resident living in the provider's home who is 12 years of age or older.

(a) A person described in sub. (2)(intro.) shall submit a completed background information disclosure form every four years to the county agency.

(b) The county agency shall obtain criminal and other background history for each person described in sub. (2)(intro.)

(3) **FALSE INFORMATION PENALTIES** In addition to the statutory penalty, a person who knowingly and intentionally provides false information or omits information on the department's background information disclosure form, or who subsequently fails to report any information about a pending charge or conviction for a crime or other act or offense requested on the department's form, may be subject to additional sanctions as determined by the agency, including one or more of the following:

(a) Denial or revocation of regulatory approval by the agency.

(b) Denial contract approval or termination of contract by the agency.

(c) Denial of employment or termination of employment by the agency.



(d) Special regulatory conditions or limitations placed upon the person by the agency, including but not limited to restriction to off-premises locations during regulated business hours or restrictions on access to clients.

(e) Requirement for a human services professional assessment that the person is fit and qualified before the person is allowed to be on the premises.

**NOTE: Secs. 48.685(6)(c), Stats., provides that a person who provides false information on a background information form may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by rule.**

(4) **CRIMINAL AND OTHER BACKGROUND HISTORY.** The county agency shall obtain the following information for review under subs. (1) and (2):

(a) Records maintained by the department of justice and, if applicable and available, a record search from the records maintained by a native American tribal court.

(b) Information that is contained in the registry under s. 146.40 (4g), Stats., regarding any findings against the person.

(c) Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.

(d) Information maintained by the department of health and family services regarding any substantiated reports of child abuse or neglect against the person.

(e) Information maintained by the department of health and family services regarding any denial to the person of a license, continuation or renewal of a license, certification, a contract, or permission to be employed by an entity or reside in an entity due to a conviction or a pending charge of a serious crime. If information obtained under this paragraph indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract or permission to be employed by an entity or reside in an entity, the county agency need not obtain the information specified in pars. (a) to (d).

(a) The entity or person has submitted a completed rehabilitation review request form prior to October 1, 1999 to the agency that must review the rehabilitation request.

(b) Except for sub. (4)(b)7. and 8., the person must show that he or she is otherwise eligible for rehabilitation review under sub. (4)(c).

(c) The person must have been operating the regulated or approved entity, or have been working for or under contract in the same capacity with the entity, or residing at the entity, prior to October 1, 1998.

(d) The person is awaiting rehabilitation review from an agency and the agency is unable to complete a rehabilitation review request for the person prior to October 1, 1999.

SECTION 13. DWD 55.11 is created to read:

**DWD 55.11 Crimes tables - incorporation by reference.** Tables A, B, C and D of s. HFS 12.11 are incorporated by reference as Table DWD 55, for use in making determinations under ss. DWD 55.04 and 55.05.

**NOTE: A copy of the crimes tables may be obtained by calling the Office of Child Care at (608) 266-9703 or by sending a written request to the Office of Child Care at P.O. Box 7935, Madison WI 53707. In addition, the tables are posted by the Department of Health and Family Services at the following web site address:  
[http://www.dhfs.state.wi.us/reg\\_licens/caregiver/cgindex.html](http://www.dhfs.state.wi.us/reg_licens/caregiver/cgindex.html)**

**EFFECTIVE DATE.** This emergency rule shall take effect upon publication in accordance with sec. 227.24, Stats.

(End)

# State of Wisconsin

## Department of Workforce Development

### DAY CARE CERTIFICATION

The Wisconsin Department of Workforce Development proposes an order to: repeal HFS 55.80 and 55.81; renumber HFS 55.55 to 55.62; amend DWD 55.02(4) and (22), 55.03(2)(c), 55.04(2)(a) and (b), (3)(c), (d)1. and 2., (5)(a) and (b), (7)(a) and (b)1. and (8), 55.08(3), and 55.09(2)(e)1.; repeal and recreate DWD 55.02(1) and 55.05; and create DWD 55.04(9), 55.08(2)(n) and (5)(i), and 55.09(5)(g) and (6)(f), relating to criminal record background checks for certified day care operators, employes and contractors of certified day care operators, and nonclient residents at certified day care locations.

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#### Finding of Emergency

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

This represents the most recent amended version of this emergency rule which was first adopted on October 1, 1998. Beginning on October 1, 1998, recently enacted provisions in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

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#### Analysis

**Authority for rule.** secs. 48.651 and 49.155(1d), Stats.

**Statute interpreted.** secs. 48.651, 48.685 and 49.155(1d), Stats.

In accordance with the statutes cited above and administrative rules under consideration by the Department of Health and Family Services under sec. 48.685, Stats., the Department of Workforce Development proposes this rule to provide guidance for county agencies and certified day care operators in complying with the background review requirements of sec. 48.685, Stats.

The proposed rule provides that county agencies shall follow the provisions of ch. HFS 12, Wis. Adm. Code, in obtaining background information and conducting background reviews under sec. 48.685, Stats. This includes following the same requirements for obtaining background information and for evaluating the information in accordance with the crimes list created as an attachment to ch. HFS 12. County agencies are required to apply the same standards to certified day care operators as ch. HFS 12 applies to licensed day care centers. The same standards may also apply to employes, contractors and nonclient residents.

In accordance with sec. 48.685, Stats., the background review requirements apply to new certified day care operators effective October 1, 1998, and to existing certified day care operators effective October 1, 1999. A county agency is not required to bar an certified day care operator or other affected person who meets the eligibility requirements and has submitted a rehabilitation review request that has not been decided by October 1, 1999, until the agency has completed its consideration of the rehabilitation review request.

**Other standards.** The proposed rule amends the standards for certified day care to provide that smoking shall be prohibited in any indoor or outdoor area in which children are present and to require that the day care provider keep a written record of the daily hours of attendance of each child in care.

**Other provisions.** Obsolete rule provisions relating to child care start-up grants are repealed.

SECTION 1. HFS 55.55 to 55.62 are renumbered to DWD 55.01 to 55.09.

SECTION 2. HFS 55.80 and 55.81 are repealed.

SECTION 3. DWD 55.02(1) is repealed and recreated to read:

DWD 55.02(1) "Agency" has the same meaning as "county agency."

SECTION 4. DWD 55.02(4) is amended to read:

DWD 55.02(4) "County agency" means a county department of social services established under s. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.23, Stats., and includes a tribal agency.

SECTION 5. DWD 55.02(22) is amended to read:

DWD 55.02(22) "Wisconsin works participant" or "W-2 participant" means an individual participating in the Wisconsin works program ~~for families with dependent children~~ administered under ss. 49.141 to 49.161, Stats.

SECTION 6. DWD 55.03(2)(c) is amended to read:

DWD 55.03(2)(c) The care permits a ~~Job Opportunities and Basic Skills (JOBS) program enrollee~~ Wisconsin works applicant to ~~attend a JOBS program~~ participate in job search, training or orientation under s. 49.147(2)(a), Stats., prior to the development of an employability plan ~~under s. 49.193 (4), Stats., approved by a JOBS administrative.~~

SECTION 7. DWD 55.04(2)(a) and (b), (3)(c), (d)1. and 2., (5)(a) and (b), (7)(a) and (b)1., and (8) are amended to read:

DWD 55.04(2)(a) Family day care and in-home providers are required to meet the standards under s. ~~HFS 55.61~~ DWD 55.08 and may care for preschool children or school-age children or a combination of preschool and school-age children consistent with Table ~~55.61 (6)~~ 55.08(6).

(b) School-age day care programs are required to meet the standards under s. ~~HFS 55.62~~ DWD 55.09.

(3)(c) The applicant shall ~~submit a completed notarized background character verification form for each provider, employe, prospective employe, substitute or adult living in the provider's home~~ comply with the background information requirements of s. 48.685, Stats.

(3)(d)1. If the application is for certification under sub. (2)(a), the county or tribal agency shall review the application for compliance with standards under s. ~~HFS 55.61~~ DWD 55.08 prior to issuing a certificate.

2. If the application is for certification under sub. (2)(b), the county or tribal agency shall refer the application to a licensing representative in the department of health and family services regional office. The licensing representative shall determine whether the applicant is in compliance with all standards under s. ~~HFS 55.62~~ DWD 55.09 and report back to the county or

tribal agency. The county or tribal agency may issue a certificate based on the licensing representative's report.

(5)(a) Level I (~~or regular~~), certification may be issued only after the provider has demonstrated compliance with all certification standards including training. Level I (~~or regular~~), certification shall be for a period of 2 years and shall be renewed upon application if the provider continues to comply with the certification standards under s. ~~HFS 55.61 or 55.62~~ DWD 55.08 or 55.09. A provider is not eligible to be issued Level I (~~or regular~~), certification if the provider is related to all the children in the provider's care.

(b) Level II (~~or provisional~~), certification may be issued only after the provider has demonstrated compliance with all certification standards under s. ~~HFS 55.61~~ DWD 55.08, except standards for training under s. ~~HFS 55.61 (1) (b)~~ DWD 55.08(1)(b). Level II (~~or provisional~~), certification shall be for a period of 2 years and shall be renewed upon application if the provider continues to comply with the certification standards, except standards for training under s. ~~HFS 55.61 (1) (b)~~ DWD 55.08(1)(b).

(7)(a) County and tribal agencies shall maintain records demonstrating provider compliance with s. ~~HFS 55.61(1)~~ DWD 55.08(1).

(b)1. County and tribal agencies shall help assure provider compliance with s. ~~HFS 55.61 (2) to (12)~~ DWD 55.08 (2) to (12) in accordance with this paragraph.

(8) A county or tribal agency may grant an exception to any standard in s. ~~HFS 55.61 or 55.62~~ DWD 55.08 or 55.09 if the county or tribal agency determines that an alternative means meets the intent of the requirement, except for rules related to criminal background investigation required under s. ~~48.651 (2)~~ 48.685, Stats.

SECTION 8. DWD 55.04(9) is created to read:

DWD 55.04(9) CERTIFICATION DECISION AFTER BACKGROUND REVIEW.

The county agency shall conduct background reviews in accordance with s. 48.685, Stats. For guidance in resolving issues that arise in particular cases, the county agency shall follow ch. HFS 12, Wis. Adm. Code, and the crimes table incorporated into CH. HFS 12, Wis. Adm. Code, and shall apply the standards which apply to licensed day care facilities.

SECTION 9. DWD 55.05 is repealed and recreated to read:

**DWD 55.05 Criminal history and child abuse record search.** (1) The county agency shall follow the requirements for criminal history and child abuse record search that are contained in s. 48.685, Stats., and ch. HFS 12, Wis. Adm. Code, and the crimes table incorporated into ch. HFS 12, Wis. Adm. Code, and shall apply the standards which apply to licensed day care facilities, except the county agency shall require any prospective or current employe, contractor under the control of the certified day care provider, or nonclient resident who has or is expected to have access to clients to submit the completed background information form to the county agency. In applying the provisions relating to rehabilitation decisions, all decisions and review procedures shall be made and conducted by the county agency.

**NOTE: Detailed information on ch. HFS 12, Wis. Adm. Code, may be obtained by calling the Office of Child Care at (608) 266-9703 or by sending a written request to the Office of Child Care at P.O. Box 7935, Madison WI 53707. In addition, the DHFS requirements are posted by the Department of Health and Family Services at the following web site address: [http://www.dhfs.state.wi.us/reg\\_licens/caregiver/cgindex.html](http://www.dhfs.state.wi.us/reg_licens/caregiver/cgindex.html).**

(2) Each county agency shall maintain its records concerning each person who is denied a certificate due to the review of background information. The county shall immediately report the receipt of an application for rehabilitation review and the results of each rehabilitation review to the office of legal counsel of the department of health and family services.

(3) A county agency need not bar and may continue the regulatory approval of a certified day care operator, employe, contractor or nonclient resident beyond October 1, 1999, until a favorable rehabilitation review decision has been reached by the agency and all of the following are met:

(a) The certified day care operator or person has submitted a completed rehabilitation review request form prior to October 1, 1999, to the agency that must review the rehabilitation request.

(b) Except for any required waiting period, the certified day care operator or person must show that he or she is otherwise eligible for rehabilitation review.

(c) The certified day care operator or person must have been operating the day care, or have been working for or under contract in the same capacity with the day care, or residing at the day care prior to October 1, 1998.

(d) The person is awaiting rehabilitation review from a county agency and the county agency is unable to complete a rehabilitation review request for the person prior to October 1, 1999.

**NOTE: The application for rehabilitation review and the results of the rehabilitation review should be sent to the following address: Office of Legal Counsel, Department of Health and Family Services, 1 W. Wilson St., Room 651, P.O. Box 7850, Madison, WI 53701-7850.**

SECTION 10. DWD 55.08(2)(n) is created to read:

DWD 55.08(2)(n) Smoking shall be prohibited in any indoor or outdoor area in which children are present.

SECTION 11. DWD 55.08(3) is amended to read:



DWD 55.08(3) When a provider cares for children in the children's own home, the provider shall comply with requirements in sub. (2) (c), (e), (h), ~~and (L)~~, and (n), but the provider is not required to comply with requirements in sub. (2) (a), (b), (d), (f), (g), (i), (j), (k) and (m).

SECTION 12. DWD 55.08(5)(i) is created to read:

DWD 55.08(5)(i) The provider shall keep a written record of the daily hours of attendance of each child in care.

SECTION 13. DWD 55.08 (6)(d) is amended to read:

DWD 55.08 (6)(d) The maximum number of children that ~~one~~ the provider may care for is shown in Table ~~55.61~~ 55.08 (6) A and B.

SECTION 14. DWD 55.09(e)1. is amended to read:

DWD 55.09(e)1. The name, address, date of birth, education, position names and addresses of employers in previous work experience in child care, address and telephone number of a person to be notified in an emergency, ~~and a statement signed by the employe affirming that he or she has not been convicted or is not the subject of a pending criminal charge as specified under s. HFS 55.59 (1).~~

SECTION 15. DWD 55.09(5)(g) is created to read:

DWD 55.09(5)(g) Smoking shall be prohibited in any indoor or outdoor area in which children are present.

SECTION 16. DWD 55.09(6)(f) is created to read:

DWD 55.09(6)(f) The provider shall keep a written record of the daily hours of attendance of each child in care.

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.

SENATOR JUDITH B. ROBSON  
CO-CHAIR  
PO Box 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR  
PO Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

March 24, 1999

Secretary Linda Stewart  
Department of Workforce Development  
PO Box 7946  
201 East Washington Avenue  
Madison, WI 53707-7946

Dear Secretary Stewart:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing on March 24, 1999. At that meeting, JCRAR received public testimony regarding **Emergency Rule DWD 55**, relating to criminal background reviews in certified day care facilities.

The Joint Committee for the Review of Administrative Rules met in Executive Session on March 24, 1999 and adopted the following motion:

Carried unanimously: Pursuant to §227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for Review of Administrative Rules extends the effective date of **DWD 55** by 36 days, at the request of the Department of Workforce Development.

Ayes: (10) Senators Robson, Grobschmidt,  
\*Shibilski, Welch, and \*Darling;  
Representatives Grothman, Seratti,  
Gunderson, Kreuser, and Black

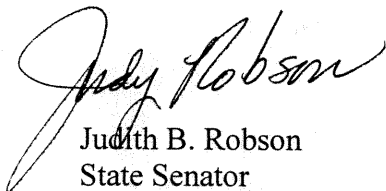
Noes: (0)

Absent: (0)\* Roll held open, voted by phone

**Motion Carried: Extension Granted.**  
10 Ayes, 0 Noes, 0 Absent.

Pursuant to §227.24(2)(c), *Wisconsin State Statutes*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District  
Co-Chair, JCRAR



Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District  
Co-Chair, JCRAR

JBR:chmiv

cc: Secretary of State La Follette  
Revisor of Statutes Gary Poulson

SENATOR JUDITH B. ROBSON  
 CO-CHAIR  
 PO Box 7882  
 MADISON, WI 53707-7882  
 (608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
 CO-CHAIR  
 PO Box 8952  
 MADISON, WI 53708-8952  
 (608) 264-8486

**JOINT COMMITTEE FOR  
 REVIEW OF ADMINISTRATIVE RULES**

***Emergency Rule Extension Motion Form***

*Last Modified March, 1999*

Date: March 24, 1999

Location: Wisconsin State Capitol, 300 SE, Madison, WI

Moved by Robson, Seconded by Kreuser

**THAT**, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule DWD 55 by 36 days, at the request of the Department of Workforce Development.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT	X		
3. Senator SHIBLISKI			
4. Senator WELCH	X		
5. Senator DARLING			
6. Representative GROTHMAN	X		
7. Representative GUNDERSON	X		
8. Representative SERATTI	X		
9. Representative KREUSER	X		
10. Representative BLACK	X		
Totals			

Motion Carried

Motion Failed

SENATOR JUDITH B. ROBSON  
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

P.O. Box 7882  
MADISON, WI 53707-7882  
(608) 266-2253

P.O. Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

### *Emergency Rule Extension Motion Form*

*Last Modified January 1999*

February 25, 1999  
411 South, State Capitol

Moved by Glenn Grothman, Seconded by Judith Robson

THAT, pursuant to s. 227.24(2)(a), stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule DWD 55 by 30 days, at the request of the Department of Workforce Development.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI			
4. Senator WELCH		✓	
5. Senator DARLING			
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals			

Motion Carried

Motion Failed

SENATOR JUDITH B. ROBSON  
CO-CHAIR  
PO Box 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR  
PO Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

***Emergency Rule Extension Motion Form***

*Last Modified March, 1999*

Date: March 24, 1999

Location: Wisconsin State Capitol, 300 SE, Madison, WI

Moved by Robson, Seconded by Kreuser

**THAT**, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule DWD 55 by 36 days, at the request of the Department of Workforce Development.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT			✓
3. Senator SHIBLISKI	✓		
4. Senator WELCH	✓		
5. Senator DARLING	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals	9		1

Motion Carried

Motion Failed

END



END

SENATOR JUDITH B. ROBSON  
CO-CHAIR  
P.O. BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR  
P.O. BOX 8952  
MADISON, WI 53708-8952  
(608) 264-6486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 11, 2000

Senator Fred Risser  
Senate President

Representative Scott Jensen  
Speaker of the Assembly

Re: Emergency Rule DWD 290.155  
Emergency Rule ETF 20.25(1)  
Emergency Rule PI 35

Dear Senator Risser and Representative Jensen:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on May 10, 2000. At that meeting, the JCRAR received public testimony regarding the following emergency rules:

Emergency Rule DWD 290.155, relating to the annual adjustment of thresholds for application of prevailing wage rates for state or local public works projects;

Emergency Rule ETF 20.25(1), relating to distribution to annuitants of the total amount distributed from the transaction amortization account to the annuity reserve under the non-statutory provisions of 1999 Wisconsin Act 11; and

Emergency Rule PI 35, relating to the Milwaukee Parental School Choice Program.

Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule DWD 290.155 for 60 days. The committee approved the motion on a 6 to 4 vote.


Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule ETF 20.25(1) for 60 days. The committee approved the motion on a 9 to 1 vote.

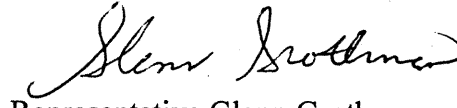
Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule PI 35 for 60 days. The committee approved the motion on a 9 to 1 vote.



We are giving you this notice of the committee's action pursuant to § 227.24(2)(c), *Stats.*, and we ask that you notify the appropriate standing committees of each house of the legislature of the JCRAR's action.

Sincerely,

  
Senator Judith B. Robson  
15<sup>th</sup> Senate District

  
Representative Glenn Grothman  
59<sup>th</sup> Assembly District

JBR:GG:da

Tommy G. Thompson  
Governor

Linda Stewart  
Secretary



State of Wisconsin

Department of Workforce Development

---

OFFICE OF THE SECRETARY

201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-7552  
Fax: (608) 266-1784  
<http://www.dwd.state.wi.us/>

May 1, 2000

The Honorable Judith Robson  
JCRAR Senate Co-Chair  
Room 15 South, State Capitol  
INTER-D

The Honorable Glenn Grothman  
JCRAR Assembly Co-Chair  
Room 15 North, State Capitol  
INTER-D

Dear Senator Robson and Representative Grothman:

The Department of Workforce Development has an emergency rule in effect that will expire before the permanent rule is effective unless the emergency rule is extended. Pursuant to s. 227.24(2), Stats., the department requests a 60-day extension of the emergency rule s. DWD 290.155, relating to the annual adjustment of thresholds for application of prevailing wage rates for state or local public works projects.

Under ss. 66.293(5) and 103.49 (3g), Stats., and the current permanent rule s. DWD 290.155, the state prevailing wage rate laws do not apply to any single-trade public works project with an estimated cost below \$33,000 or any multi-trade public works project with an estimated cost below \$164,000. DWD is required to adjust the dollar amounts of the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. The emergency rule and the proposed permanent rule increase the thresholds to \$34,000 for single-trade projects and \$168,000 for multi-trade projects based on a 2.3% increase in the construction cost index between December 1998 and December 1999. A copy of the emergency rule is enclosed.

The emergency rule was effective January 1, 2000, and will expire May 30, 2000. The proposed permanent rule (CR 00-24) is currently being reviewed by the Senate Committee on Labor and the Assembly Committee on Labor and Employment. The earliest date that the permanent rule may be effective is August 1, 2000. Therefore, the department requests a 60-day extension of the emergency rule to prevent a lapse in department authority to increase the threshold for application of the prevailing wage law during the period before the permanent rule is effective.

If you have any questions about prevailing wage rules, please contact Patricia Hewitt of the department's Equal Rights Division at 266-6469.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elaine S. Pridgen'. The signature is fluid and cursive, written over a white background.

Elaine S. Pridgen  
DWD Rules Coordinator

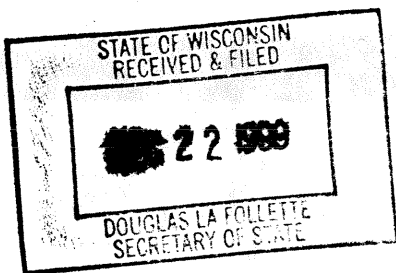
# Rules Certificate


STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF WORKFORCE DEVELOPMENT )

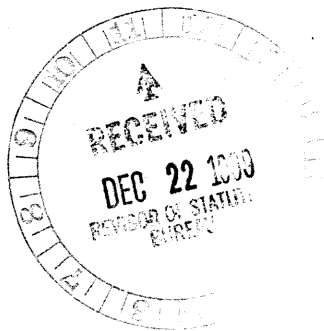
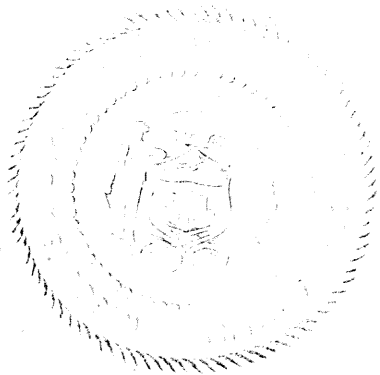
I, Linda Stewart, Secretary of the Department of Workforce Development, and custodian of the official records, certify that the annexed rules, relating to , were duly approved and adopted by this department on December 21, 1999.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the of the Department of Workforce Development at 201 E. Washington Avenue in the city of Madison, this 21st day of December 1999.



  
Secretary or designee



## Order Adopting Rules

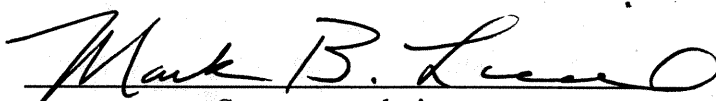
Pursuant to authority vested in the Department of Workforce Development by sections 66.293(5) and 103.49(3g), Stats., the Department of Workforce Development amends rules of Wisconsin Administrative Code section DWD 290.155 relating to the Annual Adjustment of Thresholds for Application of the Prevailing Wage Rates for State or Local Public Works Projects.

The attached rules shall take effect on January 1, 2000, pursuant to section 227.24, Stats.

Adopted at Madison, Wisconsin this

date: December 21, 1999

Department of Workforce Development



Secretary or designee

**State of Wisconsin  
Department of Workforce Development**

**EMERGENCY RULE**

**Annual Adjustment of Thresholds for Application of the Prevailing  
Wage Rates for State or Local Public Works Projects**

The Wisconsin Department of Workforce Development proposes an order to amend DWD 290.155, relating to the annual adjustment of thresholds for application of the prevailing wage rates for state or local public works projects.

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**Finding of Emergency**

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

The Department of Workforce Development is acting under its statutory authority to annually adjust thresholds for the application of prevailing wage laws on state or local public works projects. The thresholds are adjusted in accordance with any change in construction costs since the last adjustment. The last adjustment was by emergency rule in January 1999 based on construction costs in December 1998. The Department uses the construction cost index in the December issue of the *Engineering News-Record*, a national construction trade publication, to determine the change in construction costs over the previous year. The current construction cost index indicates a 2.3% increase in construction costs over the previous year. This increase in construction costs results in an increase in the threshold for application of the prevailing wage laws from \$33,000 to \$34,000 for single-trade projects and from \$164,000 to \$168,000 for multi-trade projects.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six months, until the conclusion of the permanent rule-making process. Between January 1, 2000, and July 1, 2000, a single-trade project with a minimum estimated project cost of more than \$33,000 but less than \$34,000 or a multi-trade project with an estimated cost of more than \$164,000 but less than \$168,000 would not be exempt from the prevailing wage laws, as they would be if the emergency rule were promulgated. The threshold adjustments for application of the prevailing wage laws are based on national construction cost statistics and are unlikely to be

changed by the permanent rule-making process. The Department is proceeding with this emergency rule to avoid imposing an additional administrative burden on local governments and state agencies.

### Analysis

**Authority for rule:** secs. 66.293(5) and 103.49(3g), Stats.

**Statutes interpreted:** secs. 66.293(5) and 103.49(3g), Stats.

The state prevailing wage laws require that, when a state agency or local governmental unit constructs a public works project, it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Under secs. 66.293(5) and 103.49(3g), Stats., and the current s. DWD 290.155 the state prevailing wage rate laws do not apply to any "single-trade public works project" (a project involving the employment of only one trade) whose estimated cost is below \$33,000, and it does not apply to any "multi-trade public works project" whose estimated cost is below \$164,000.

Under secs. 66.293(5) and 103.49(3g), Stats., and DWD 290.15, the Department is required to adjust the dollar amounts of the thresholds each year, in proportion to any change in construction costs since the thresholds were last determined. The proposed rule changes the thresholds to \$34,000 for single-trade projects and \$168,000 for multi-trade projects, based on a 2.3% increase in the construction cost index between December 1998 and December 1999.

### **Rule Text**

SECTION 1. DWD 290.155 is amended to read:

DWD 290.155 This chapter does not apply to any single-trade public works project for which the estimated cost of completion is below ~~\$33,000~~ \$34,000, and any multi-trade public works project for which the estimated cost of completion is below ~~\$164,000~~ \$168,000.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on January 1, 2000, as provided in s. 227.24(1)(d), Stats.

(End)

FISCAL ESTIMATE  
DOA-2048 N(R03/97)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
DWD 290.155

Amendment No. if Applicable

Subject

Annual Adjustment of Thresholds for Application of the Prevailing Wage Rates for State or Local Public Works Projects

Fiscal Effect

State:  No State Fiscal Effect

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

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

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

Local:  No local government costs

- |   |   |  |
|---|---|--|
| <p>1. <input type="checkbox"/> Increase Costs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>2. <input checked="" type="checkbox"/> Decrease Costs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>3. <input type="checkbox"/> Increase Revenues</p> <p style="padding-left: 20px;"><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues</p> <p style="padding-left: 20px;"><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>5. Types of Local Governmental Units Affected:</p> <p><input checked="" type="checkbox"/> Towns <input checked="" type="checkbox"/> Villages <input checked="" type="checkbox"/> Cities</p> <p><input checked="" type="checkbox"/> Counties <input checked="" type="checkbox"/> Others _____</p> <p><input checked="" type="checkbox"/> School Districts <input checked="" type="checkbox"/> WTCS Districts</p> |
|---|---|--|

Fund Sources Affected

- GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations~

Assumptions Used in Arriving at Fiscal Estimate

Currently a public project that costs more than \$33,000 for a single-trade project or \$164,000 for a multi-trade project must obtain a prevailing wage rate determination from DWD and pay wages at those rates. This rule raises the thresholds to \$34,000 and \$168,000 to reflect the increase in construction costs since December 1998. Under this rule, a state or local government with a public works project that costs less than \$34,000 for a single-trade project or less than \$168,000 for a multi-trade project will not be covered by the prevailing wage requirement.

Long-Range Fiscal Implications

None

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

Authorized Signature/Telephone No.

*Edward Bernstein* 266-9427

Date

12/21/99

**FISCAL ESTIMATE WORKSHEET**

**1999 Session**

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

ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
DWD 290.155

Amendment No.

Subject

Annual Adjustment of Thresholds for Application of the Prevailing Wage Rates for State or Local Public Works Projects

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

\$0

**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		-
<b>TOTAL State Costs by Category</b>	<b>\$0</b>	<b>\$0-</b>
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues -	Increased Rev.	Decreased Rev.
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	<b>\$0</b>	<b>\$ 0-</b>

**NET ANNUALIZED FISCAL IMPACT**

STATE

LOCAL

NET CHANGE IN COSTS

\$0

see narrative

NET CHANGE IN REVENUES

\$0

\$0

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

Authorized Signature/Telephone No. *266-9427*

Date *12/21/99*



SENATOR JUDITH B. ROBSON  
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(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
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**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

May 11, 2000

Secretary Linda Stewart  
Department of Workforce Development  
201 East Washington Avenue  
Madison, Wisconsin

BY INTER-D MAIL


Re: Emergency Rule DWD 290.155


Dear Secretary Stewart:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on May 10, 2000. At that meeting, the JCRAR received public testimony regarding Emergency Rule DWD 290.155, relating to the annual adjustment of thresholds for application of prevailing wage rates for state or local public works projects. Based on that testimony, the committee adopted a motion extending Emergency Rule DWD 290.155 for 60 days. The committee approved the motion on a 6 to 4 vote.

Pursuant to § 227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

  
Senator Judith B. Robson  
15<sup>th</sup> Senate District

  
Representative Glenn Grothman  
59<sup>th</sup> Assembly District

JBR:GG:da

SENATOR JUDITH B. ROBSON  
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**JOINT COMMITTEE FOR  
 REVIEW OF ADMINISTRATIVE RULES**

***Emergency Rule Extension Motion Form***

*Last Modified May2000*

Date 5/10/00 Location 201 SE  
 Moved by Robson, Seconded by Grobschmidt

**THAT**, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule DWD 290.155 by 60 days, at the request of the Department of Workforce Development.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI	✓		
4. Senator WELCH		✓	
5. Senator SCHULTZ		✓	
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON		✓	
8. Representative SERATTI	✓		
9. Representative KREUSER		✓	
10. Representative BLACK	✓		
Totals	6	4	

\* polled by telephone

Motion Carried

Motion Failed