



Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
John H. Farrow, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

50 49
JUL 21 2000
28

July 21, 2000

The Honorable Judith Robson
The State Senate
State Capitol, Room 15 South
Madison, WI 53702

The Honorable Glenn Grothman
The State Assembly
State Capitol, Room 15 North
Madison, WI 53702

Dear Senator Robson and Representative Grothman:

I just received a copy of a letter dated July 17, 2000, from representatives of the Citizens' Utility Board, the Wisconsin Industrial Energy Group, the Wisconsin Merchants Federation, and the Wisconsin Newspaper Association that request that your Committee schedule a meeting "for the purpose of directing the Public Service Commission (PSC) to adopt as administrative rules its policies and interpretations of state law covering confidential documents...."

While my other colleagues on the Commission may wish to respond to the letter addressed to your Committee, I write separately to assure you that the issue raised by the signatories of the letter—whether our agency should promulgate as an administrative rule, our current policies which govern our handling of confidential materials filed—is a matter that is under active consideration at our agency. As I mentioned in my previous correspondence to Representative Black on this subject, a copy of which is attached for your review, our agency may ultimately decide to promulgate rules to codify our existing procedures to ensure the greatest possible access to the records at our agency.

In advance of any meeting your committee may be contemplating regarding this matter, I wanted to further inform you that I would welcome the opportunity to discuss with the Committee our agency's recent efforts to revise our current procedures for handling confidential documents at the Commission. Moreover, we would welcome any direction that either of you might provide individually, or your Committee may want to provide us on how we can best carry out our agency's statutory obligations under the open records law. I am fully committed to working with you, your Committee, and the public we serve to ensure that the presumption of openness of our records is zealously adhered to at the Commission.

I also want to share with you some necessary background that may be helpful to the Committee in understanding why we recently initiated a process to solicit public input on how the Commission can continue to insure the greatest public access to records filed at the Commission and adhering to our statutory obligation to keep competitive utility information confidential.

The Honorable Judith Robson
The Honorable Glenn Grothman
Page 2

As you may know, I have served as Chairperson of the Public Service Commission for the past eighteen months. Mary Lou Munts, former Chairperson of our agency, established the current confidential filing guidelines—which were never intended to serve as rules or have the force or effect of a rule—in 1986. The purpose of these guidelines was simply to provide guidance to Commission staff to facilitate the handling of information deemed confidential by the filer. It is my understanding that former Chairperson Munts established these guidelines shortly after the enactment of what is now Wis. Stat. § 196.14. That statute provides: “The commission may withhold from public inspection any information which would aid a competitor of a public utility in competition with the public utility.”

Under our current guidelines, documents and other records may be confidentially filed with the Commission. When a member of the public submits an open records request to our agency to review any confidential filing, the Commission gives the party that filed the record three working days to submit its justification for confidential treatment. The Commission keeps this period short in order to respond to the open records request as soon as practicable. After receiving the filer’s statement, the Commission’s records custodian makes an independent determination on whether the records (or portions of records) may be exempt from disclosure under one or more exceptions to the Public Records Law, including Wis. State § 196.14.

During my tenure as Chairperson and as member of the Governor’s Task Force on Privacy, I have seen first hand how difficult it is for our records custodian to balance our obligation to comply with the spirit of openness in the Open Records Law and our need to withhold information that the Legislature has declared is confidential, such as trade secrets and competitive utility information. Our records custodian must rely on the comments of the filers and our technical staff in making these determinations. The work needed to complete these analyses of confidentially filed material is a top priority of Commission staff and, at times, can consume hundreds of hours. This task is becoming even more difficult as the industries we regulate at the Commission become more competitive and increasing numbers of requesters rely on the open records law to obtain business information.

There have been many instances over the past two years where our records custodian has released records over the objection of the filing utility. In many cases, the utility has simply abandoned its request for confidentiality when the records are requested. All too often, the utilities we regulate routinely file information confidentially that should be open to the public.

I have personally been frustrated by the cumbersome procedures that are set forth in our current guidelines and have made changing those guidelines a top priority at the Commission. The presumption of openness under the Open Records Law should not be frustrated by attaching cumbersome administrative procedures to open records requests at our agency. This serves neither the public nor the affected utilities we regulate. I first publicly discussed the need to take a “fresh look” at our current confidential document handling processes at an open meeting on April 13, 2000. On May 26, 2000, the Commission initiated an investigation in order to solicit

The Honorable Judith Robson
The Honorable Glenn Grothman
Page 3

public comment to assist the Commission in administering its obligations under the Public Records Law, and Wis. Stat. § 196.14, Investigation Into What Constitutes a Trade Secret Under Wis. Stat. §§ 19.36(5) and 134.90(1)(c) and Information Which Would Aid a Competitor Under Wis. Stat. § 196.14 for Purposes of Applying Exemptions to Disclosure of Commission Records Under the Public Records Law. A copy of the notice in this proceeding is attached for your review. Comments are due on July 26, 2000. Once the comments have been received, I intend on scheduling this matter as soon as practicable.

Two of the signatories of the July 17th letter to your Committee, the Citizens' Utility Board and the Wisconsin Newspaper Association, were specifically identified in the notice we issued in this proceeding. Moreover, the need for rulemaking is an issue that falls squarely under Issue 7 of our notice, which states: "The reasonableness of the Commission's confidentiality handling guidelines". We hope they will participate in this process because as I have stated previously, our agency may ultimately decide that rulemaking is the proper vehicle to modify our existing process for handling confidential filings.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,



Ave Bie
Chairperson

Enclosures

k:RMG\Letters\Robson and Grothman 7-21-00

cc: Commissioner Joseph Mettner
Commissioner John Farrow
Senator Charles Chvala
Representative Scott Jensen
Senator Rodney Moen
Representative Timothy Hoven
Senator Spencer Black
Representative Scott Gunderson
Senator Judith Robson
Senator Kevin Shibilski
Senator James Kreuser
Senator Richard Grobschmidt
Senator Dale Schultz

Senator Robert Welch
Senator Lorraine Seratti
Richard Sklansky
Richard Sweet

WISCONSIN NEWSPAPER ASSOCIATION

3822 MINERAL POINT ROAD ♦ PO BOX 5580 ♦ MADISON, WISCONSIN 53705

... the world's oldest Press Association. Established in 1853.



(608) 238-7171

(800) 261-4242 (in Wis.)

Fax: 608-238-4771

E-mail: info@wnanews.com

July 17, 2000

Senator Judy Robson
Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Representative Glenn Grothman
Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 North
State Capitol
P.O. Box 8952
Madison, WI 53708

RE: PSC Rulemaking

Dear Senator Robson & Representative Grothman:

We respectfully request that you schedule a meeting of the members of the Joint Committee for the Review of Administrative Rules at your earliest convenience for the purpose of directing the Public Service Commission (PSC) to adopt as administrative rules its policies and interpretations of state law covering confidential documents (see s. 19.36 (5), 134.90 (1)(c) and 196.14, Wis. Stats.). In support of this request, we are attaching copies of correspondence and legal memos from the PSC and the Wisconsin Legislative Council on the same.

Our request is not about the proper policy to be adopted to cover the disclosure of otherwise public/confidential documents. That will come through the rulemaking process and reasonable people may well disagree. Our request is about accountability. It is about public and legislative input, review and control over a state agency. We are aware of Chapter 227's provisions allowing trade associations to petition a state agency to begin rulemaking proceedings and take this opportunity to defer to JCRAR.

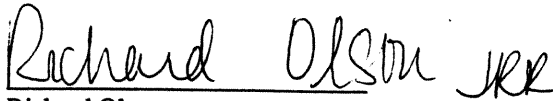
This is not a new issue for the Wisconsin State Legislature or the Joint Committee for the Review of Administrative Rules. The JCRAR's tradition of active oversight of state agencies began in the early 1970's and since then has earned this committee a national reputation for acting as a "poor man's court" fostering public discussion of agency standards and rules ("silent laws") that are made within the folds of the state bureaucracy by unelected officials.

Our request is not partisan. Historically JCRAR has functioned in a bipartisan fashion as a champion of the legislature that over decades has delegated significant lawmaking authority to state agencies, including the PSC. In fact, it was JCRAR that litigated and won state Supreme Court authority for its oversight responsibilities, including suspension of administrative rules. Critical to this committee's purpose of watch dogging the use (and abuse) of lawmaking power by state agencies is the rulemaking process. Agency standards that have the force and effect of law must be in the Administrative Code and be developed through "a public process that involves the public, the legislature and its committees." Our open records laws reinforce this committee's responsibility and power under Chapters 13 & 227, Wis. Stats.

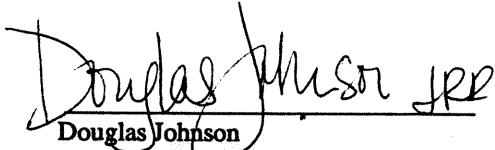
Thank you for your timely response.



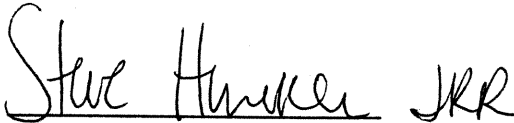
Sandra George
Executive Director
Wisconsin Newspaper Association



Richard Olson
Wisconsin Industrial Energy Group



Douglas Johnson
Wisconsin Merchants' Federation
Sr. Vice President and
General Counsel



Steve Hiniker
Executive Director
Citizens' Utility Board

cc: Senate Majority Leader Chuck Chvala
Assembly Speaker Scott Jensen
PSC Chairperson Ave Bie
Senator Rod Moen
Representative Tim Hoven
JCRAR members
Ron Sklansky
Dick Sweet

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**

September 20, 2000

BY INTER-D

Ave Bie, Chairperson
Joseph Mettner, Commissioner
John Farrow, Commissioner
Public Service Commission
610 North Whitney Way
Madison, WI

Re: PSC guidelines for handling confidential documents

Dear Members of the Public Service Commission:

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 September 20, 2000. At that meeting, the JCRAR received public testimony regarding Public Service Commission guidelines for handling confidential documents.

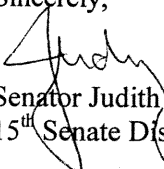
Based on that testimony, the committee adopted the following motion:


that, pursuant to section 227.26(2)(b), the Joint Committee for Review of Administrative Rules finds that Public Service Commission guidelines and policies relating to the handling of confidential documents meet the definition of a rule in section 227.01(13), Stats., and should be promulgated as emergency rules under section 227.24(1)(a), Stats., within 30 days.

The committee approved the motion on an 8 to 1 vote.

If you have questions regarding the substance of the committee's action, please feel free to contact us. If you have questions regarding the rule promulgation process, please contact the committee's counsel, Mr. Ron Sklansky, at the Joint Legislative Council.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da

Utility Workers Coalition

July 24, 2000

Sen. Judy Robson, Co-Chair
Jt. Committee for Review
of Administrative Rules
Room 15 South
State Capitol
P. O. Box 7882
Madison, WI 53707-7882

Rep. Glenn Grothman, Co-Chair
Jt. Committee for Review
of Administrative Rules
Room 15 North
State Capitol
P. O. Box 8952
Madison, WI 53708

Dear Sen. Robson & Rep. Grothman:

The Utility Workers Coalition is extremely concerned about the public's right to access information regarding the operation of Wisconsin's regulated utilities. Our organization represents a variety of international unions with locals in Wisconsin and neighboring states. In all, over 10,000 energy-related utility workers are represented in Wisconsin alone.

Our membership is not in a position to determine what should be the specific policy that government agencies should follow regarding whether documents are deemed confidential or public. However, recently there have been concerns about the volume and variety of public utility documents that have been granted confidential status by the Public Service Commission. We acknowledge that there are legitimate reasons, often proprietary in nature, which require consideration as confidential protection from competitors. Our concern has become more with the process regarding determination of a document's status. In an era of great upheaval in the energy industry, the public needs access to information in order to influence the direction of the debate over the state's energy future.

Therefore, the Utility Workers Coalition strongly urges the Joint Committee for the Review of Administrative Rules to schedule a meeting to determine if administrative rules should be adopted to address this issue. While we believe that the state's various governmental bodies need a substantial degree of leeway to operate their organizations, they still need to follow the guidance of the legislature.

If you have any questions regarding our position on this issue, feel free to contact Forrest Ceel. Mr. Ceel is the President/Business Rep of L.U. 2150, IBEW, and serves as a spokesperson on this issue for the Utility Workers Coalition. His number is (262) 547-1033, Ext. 223.

Sincerely,



James Ruebsamen
Chairman

sf/opeiu/local 9

cc: PSC of Wisconsin
Rep. T. Hoven
Rep. S. Jensen
Sen. R. Moen
Sen. C. Chvala

4114 Wood Road, Racine, WI 53406 • (262) 598-0625

Local 310
International Union of Operating
Engineers, Green Bay, WI

Local 31
International Brotherhood of
Electrical Workers, Duluth, MN

Local 12005
United Steelworkers of America
Racine, WI

Local 39
Office and Professional Employees
International Union, Madison, WI

Local 7-0111
Paper, Allied-Industrial, Chemical & Energy
Workers International Union
Burlington, WI

Local 510
International Brotherhood of
Electrical Workers, Marquette, MI

Local 23
International Brotherhood of
Electrical Workers, St. Paul, MI

Local 160
International Brotherhood of
Electrical Workers, Minneapolis, MN

Local 204
International Brotherhood of
Electrical Workers, Cedar Rapids, IA

Local 965
International Brotherhood of
Electrical Workers, Madison, WI

Local 1147
International Brotherhood of Electrical
Workers, Wisconsin Rapids, WI

Local 2150
International Brotherhood of
Electrical Workers, Waukesha, WI

Local 2304
International Brotherhood of
Electrical Workers, Madison, WI

Local 109
International Brotherhood of
Electrical Workers, Moline, IL

Local 953
International Brotherhood of
Electrical Workers, Eau Claire, WI

Local 317
International Union of Operating
Engineers, Milwaukee, WI

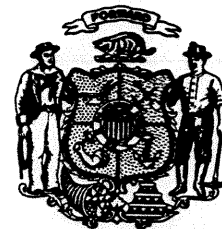
Local 266
International Union of
Operating Engineers, Manitowoc, WI

Local 148
International Union of
Operating Engineers, Maryville, IL

Local 275
International Union of
Operating Engineers, Cedar Rapids, IA

Wisconsin Council 40
American Federation of State, County
& Municipal Employees, Madison, WI

State Representative Spencer Black



State Capitol
P.O. Box 8952
Madison, WI 53708
(608) 266-7521

July 10, 2000

Senator Judy Robson
Representative Glenn Grothman
Co Chairs
Joint Committee for the Review of Administrative Rules
Hand delivered

Dear Senator Robson and Representative Grothman:

I am writing to you to ask that the July 25 public hearing of the Joint Committee for the Review of Administrative Rules include the issue of whether the "Draft Confidential Handling Procedures" issued by the Public Service Commission are required to be promulgated as a rule under section 227.10(1), Stats. I further ask that the Executive session on that day include this item so that the Committee may, if it chooses, direct the agency to promulgate the guidelines as an emergency rule under s. 227.24(1)(a).


In support of this request, I am attaching three documents described below.

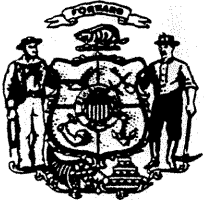
1. June 7, 2000 memo from Richard Sweet which finds that "Portions of PSC's draft procedures on confidentiality meet the definition of a 'rule' and are required to be promulgated under Chapter 227 of the Wisconsin statutes."
2. June 16, 2000 letter from Ave Bie, PSC Chairperson, responding to the Sweet memo.
3. July 3, 2000 memo from Ron Sklansky responding to the Bie letter.

The PSC contention that labeling an interpretation of the statute as a guideline exempts such an interpretation from Ch. 227 requirement for rulemaking strikes at the very heart of the administrative rules process.

Thank you for your kind consideration.

Sincerely,


Spencer Black
State Representative



Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
John H. Farrow, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

June 16, 2000

The Honorable Spencer Black
The State Assembly
State Capitol, Room 219 North
Madison, WI 53702

Re: Investigation Into What Constitutes a Trade Secret Under
Wis. Stat. §§ 19.36(5) and 134.90(1)(c) and Information Which
Would Aid a Competitor Under Wis. Stat. § 196.14 for
Purposes of Applying Exemptions to Disclosure of Commission
Records Under the Public Records Law

*Gas/Electric
260
documents from
De Puro
also interest by public
PSC/ # documents by*

05-GF-103

Dear Representative Black:

Thank you for your June 12 letter regarding the Commission's procedures for handling confidential documents.

A Legislative Council attorney has opined that some of the Commission's confidential guidelines should be promulgated as administrative rules. On the basis of this opinion, you have asked the Commission to stop utilizing all of the Commission's guidelines. While the Commission may ultimately decide to promulgate rules, it would be irresponsible for the Commission to function without guidelines until then.

In 1986, the legislature amended Wis. Stat. § 196.14. The statute requires the Commission to keep confidential, information that would aid a competitor of a public utility--even information that would otherwise be open to inspection under the Public Records Law. In response to this legislation, the Commission, chaired by former State Representative Mary Lou Munts, adopted guidelines for the confidential handling of competitive information.

The public, including the Citizens' Utility Board, fully participated in the creation of the guidelines and in the modification of the guidelines in subsequent years. But, until your press conference, no one had ever suggested that any of the procedures should be in the form of administrative rules.

The Legislative Council staff attorney's opinion that some of the guidelines should be in the form of rules does not discuss any of the dozen or so Supreme Court and Court of Appeals decisions on what policies of a state agency need to be rules. As the Commission's attorneys read those decisions, the guidelines need not be in the form of rules since they are just that--merely guidelines--which were never intended to have the force of law. *See, e.g., Schoff v. Employee Trust Funds Board*, 230 Wis. 2d 677, 602 N.W. 2d 543, 1999 Wis. App. LEXIS 1105

The Honorable Spencer Black
The State Assembly
Page 2

(Ct. App. 1999); *McLain v. State*, 169 Wis. 2d 468, 487 N.W. 2d 661, 1992 Wis. App. LEXIS 1332 (Ct. App. 1992).

On May 26, 2000, the Commission solicited comments from the public on how the Commission could insure the greatest public access to records consistent with our statutory obligation to keep competitive utility information confidential. *Investigation Into What Constitutes a Trade Secret Under Wis. Stat. §§ 19.36(5) and 134.90(1)(c) and Information Which Would Aid a Competitor Under Wis. Stat. § 196.14 for Purposes of Applying Exemptions to Disclosure of Commission Records Under the Public Records Law*, docket number 05-GF-103. The reasonableness of the Commission's confidentiality guidelines is issue number seven in this docket.

The need for rulemaking fits nicely within the scope of issue number seven. Perhaps the Legislative Council or you will decide to comment in docket number 05-GF-103. Regardless, I will see that your concerns are fully considered because I am fully committed to the greatest possible openness of Commission records consistent with the legislature's directions to respect the confidentiality of competitive information.

Sincerely,

Ave M. Bie
Chairperson

AMB:sp:K:\amb\letters\2000\rep black 6-16-00



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: June 7, 2000
TO: REPRESENTATIVE SPENCER BLACK
FROM: Richard Sweet, Senior Staff Attorney
SUBJECT: Draft Confidentiality Procedures of the Public Service Commission

This memorandum is written pursuant to your request for a discussion of the law regarding whether a draft entitled "Confidential Handling Procedures" of the Public Service Commission (PSC) should be promulgated as an administrative rule. The draft procedures provided to me by PSC staff state as follows: "These procedures are not rules; they are guidelines to facilitate the handling of information deemed confidential by the filer." However, despite this statement, for reasons stated in this memorandum, portions of the PSC's draft procedures should be promulgated as an administrative rule.

The draft procedures are set forth in a nine-page document and a three-page attachment. According to information provided to me by PSC staff, the PSC is currently in the process of conducting a proceeding regarding revisions of the draft. (Copies of the draft procedures and the Notice of Proceeding and Investigation are attached to this memorandum.) The PSC has invited certain groups to comment and has allowed any other persons to file comments with the PSC as well. The draft procedures note the Open Records Law set forth in ss. 19.31 to 19.39, Stats., and certain confidentiality statutes that are specific to the PSC in ch. 196, Stats. The draft procedures include an introduction, as well as six sections that set forth the procedures. The sections setting forth the procedures are entitled: (a) Requests for Confidential Treatment of Information; (b) Confidential Handling Procedures; (c) Commission Staff Challenge to Confidential Treatment; (d) Requests for Access to Information Subject to Confidential Treatment Filed in Proceedings; (e) Requests for Access to Information Subject to Confidential Treatment Which Was Not Filed in Proceedings; and (f) Retention of Information Subject to Confidential Treatment.

The requirements regarding promulgation of rules and the definition of what constitutes a rule are set forth in ch. 227, Stats. Section 227.01 (13), Stats., defines "rule" as follows:

227.01 (13) "Rule" means a regulation, standard, statement of policy or general order of general application which has the effect of law and which is issued by an agency to implement, interpret or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency

The above definition includes a number of exceptions. One of those is for an agency action that "(c) concerns the *internal management* of an agency and does not affect private rights or interests" [s. 227.01 (13) (a), Stats.; emphasis added].

In addition, s. 227.10 (1), Stats., requires agencies to promulgate as rules statements of general policy and interpretations of statutes. That statute states as follows:

227.10 (1) *Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. A statement of policy or an interpretation of a statute made in the decision of a contested case, in a private letter ruling under s. 73.035 or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render it a rule or constitute specific adoption of a rule and is not required to be promulgated as a rule. (Emphasis added.)*

Portions of the PSC's draft procedures concern the internal management of the PSC and do not affect private rights or interests and therefore are exceptions to the definition of "rule" in s. 227.01 (13), Stats. One example is the provision in the draft procedures that states that a certain form must be filed in quadruplicate and describes to whom the various copies are given. Another provision that seems to fall within the internal management exception to the definition of a "rule" is the statement in the draft procedures that information subject to confidential treatment is kept in locked cabinets. How an agency physically keeps information confidential seems to relate to internal management and does not affect private rights or interests.

However, other portions of the draft procedures constitute statements of policy or general orders of general application that do meet the definition of "rule" and do affect private rights or interests. Those private rights or interests might involve the rights of the public to have access to certain records and the rights of regulated entities to have certain records kept confidential.

An example of a provision in the draft procedures that affects private rights or interests is a provision that allows the regulated entities to specify the length of time for which confidentiality is requested. The maximum time period is four years, but there is an option for renewal. In addition, a provider of information may at any time request destruction of a record when the requested confidentiality period is over, with certain exceptions.

- 3 -

Another example of a provision in the draft procedures that should be promulgated as a rule under ch. 227, Stats., is the provision that states that after a determination is made that the records should not be kept confidential, the records are given confidential treatment for a reasonable time, "usually 10 days," to allow for appeals. In addition, for requests for access to records that were not filed in proceedings, the person requesting confidentiality and the person requesting access must be informed of the decision in writing. This seems to necessitate that the person requesting access identify himself or herself. (Section 19.35 (1) (i), Stats., states that generally no request under the Open Records Law may be refused because the person making the request is unwilling to be identified or to state the purpose of the request.)

You should be aware that the Department of Natural Resources (DNR) has established procedures by which persons may request that information in possession of DNR or being requested by DNR be treated as confidential. These procedures have been promulgated as an administrative rule, set forth in s. NR 2.19, Wis. Adm. Code, a copy of which is attached to this memorandum. DNR's procedures state that the burden of establishing the need for confidential treatment of records is on the person requesting that treatment. In addition, the procedures include timelines for taking actions and standards for the decision-maker to use in determining whether the record should be kept confidential.

For reasons set forth above, portions of the PSC's draft procedures on confidentiality meet the definition of a "rule" and are required to be promulgated under ch. 227, Stats. You should also be aware that the statutes provide a procedure whereby the Joint Committee for Review of Administrative Rules (JCRAR) can require an agency to promulgate a statement of policy or an interpretation of a statute as a rule. Section 227.26 (2) (b), Stats., provides as follows:

227.26 (2) (b) Requirement for promulgation. If the committee determines that a statement of policy or an interpretation of a statute meets the definition of a rule, it may direct the agency to promulgate the statement or interpretation as an emergency rule under s. 227.24 (1) (a) within 30 days after the committee's action.

Feel free to contact me if I can be of further assistance.

RNS:rv:wu;ksm

Attachments



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: July 3, 2000
TO: REPRESENTATIVE SPENCER BLACK
FROM: Ronald Sklansky, Senior Staff Attorney *RS*
SUBJECT: Confidentiality Handling Procedures of the Public Service Commission

This memorandum, prepared at your request, addresses whether a Public Service Commission (PSC) document entitled, "Confidential Handling Procedures" constitutes an administrative rule. Specifically, you have asked for a discussion of the issues raised in a letter from the PSC on this topic.

A. BACKGROUND

On June 7, 2000, you received a memorandum from Richard Sweet, Senior Staff Attorney, Wisconsin Legislative Council Staff, in which Mr. Sweet concluded that portions of the PSC's draft procedures on confidentiality meet the definition of a "rule" and should be promulgated as an administrative rule under ch. 227, Stats. In correspondence dated June 12, 2000, you communicated Mr. Sweet's opinion to the PSC and asked the agency to cease its use of the confidentiality guidelines.

The PSC Chair, Ave M. Bic, responded to your letter on June 16, 2000. The Chair stated that while the agency may decide to promulgate rules on this matter, it would be irresponsible to function without guidelines until then. She noted that s. 196.14, Stats., requires the PSC to keep certain public utility information confidential and that agency attorneys have opined that the guidelines need not be in the form of rules "since they are just that--merely guidelines--which were never intended to have the force of law."

B. DISCUSSION

As a preliminary matter, it should be noted that the commission's interpretation of s. 196.14, Stats., appears to be incorrect. The agency states that this statute requires the PSC to keep certain public utility information confidential. However, the statutory provision provides that: "The commission *may* withhold from public inspection any information which would aid

a competitor of a public utility in competition with the public utility." [Emphasis added.] The use of the word "may" denotes the placement of discretionary authority upon the agency to determine which public utility information might aid a competitor and whether that information should be maintained in a confidential status. If the Legislature intended to impose a mandate upon the PSC with regard to this information, it would have used the word "shall" in the statute.

In its response, the PSC also cited two judicial opinions in support of its position. Reliance on these opinions is misplaced. In the first case, *Jackson v. Employee Trust Funds Board*, 230 Wis. 2d 677, 602 N.W.2d 543 (Ct. App. 1999), the Wisconsin Court of Appeals avoided a determination of whether an informal advisory guide prepared by department staff should have been promulgated as an administrative rule. Instead, the court stated that the agency action was based on statutory provisions. [For examples of other opinions recognizing the existence of agency guidelines but not determining whether the guidelines should be promulgated as administrative rules, see *Sterlingworth Condominium Association v. DNR*, 205 Wis. 2d 702, 556 N.W.2d 791 (Ct. App. 1996) and *Tannler v. DHSS*, 211 Wis. 2d 179, 564 N.W.2d 735 (1997).] The second case cited by the PSC, *McClain v. State*, 169 Wis. 2d 468, 487 N.W.2d 661 (1992), is an unpublished opinion of the Wisconsin Court of Appeals and has no precedential value in any Wisconsin court under s. 809.23 (3), Stats.

There appears to be no argument that the PSC guidelines meet the definition of the term "rule" as contained in s. 227.01 (13), Stats., to the extent that the guidelines are a regulation, standard, statement of policy or order of general application issued by the PSC to implement, interpret or make specific legislation enforced or administered by it or to govern agency procedure. The essence of the dispute between you and the PSC, as indicated by Chair Bie, is whether the guidelines have the effect of law. If the guidelines have the effect of law, then the guidelines fully meet the definition of the term "rule" and should be promulgated as an administrative rule under ch. 227, Stats.

An agency action has the "effect of law" if criminal or civil sanctions can be imposed because of a violation; if licensure can be denied; or if the interests of individuals in a class can be legally affected through enforcement of the agency action. [See *Frankenthal v. Wisconsin Real Estate Brokers' Board*, 3 Wis. 2d 249, 257b, 88 N.W.2d 352, 89 N.W.2d 825 (1958); *Schoolway Transportation Company v. Division of Motor Vehicles*, 72 Wis. 2d 223, 240 N.W.2d 403 (1976); and *Wisconsin Electric Power Company v. DNR*, 93 Wis. 2d 222, 287 N.W.2d 113 (1980).]

An example of judicial application of the definition of the term "rule" to agency policies and procedures can be found in *Milwaukee Area Joint Plumbing Apprenticeship Committee v. DILHR*, 172 Wis. 2d 299, 493 N.W.2d 744 (Ct. App. 1992), *rev. den.* 497 N.W.2d 130. The court reviewed the Department of Industry, Labor and Human Relations (DILHR) Manual regarding apprenticeship programs and made the following comments:

It is immaterial that the *Manual* does not describe itself as a rule and that DILHR's published rules do not describe the *Manual* as a rule. An agency directive meeting the statutory definition of an administrative rule may appear in various forms. The agency need not refer to the directive as a rule (here citing cases concluding that

a manual, a guideline, instructions and a letter all met the definition of the term "rule")

The subtitle of the *Manual*, "A Compilation of the Policies and Procedures under which the Wisconsin Apprenticeship Program Functions," shows that it is likely to contain statements of policies constituting rules. Those of its provisions which contain mandatory language show DILHR's intent that they have the effect of law. DILHR is responsible . . . for administration of the apprenticeship law and the *Manual* was issued in connection with that obligation. To the extent that a provision in the *Manual* satisfies the elements of a "rule" . . . the provision is a rule.

Chapter I, of the *Manual* is entitled, "General Information on Wisconsin's Apprentice Program," but it contains a host of mandatory requirements for apprentice programs generally. The provisions setting forth those requirements satisfy the elements of and are rules. [*Id.*, 493 N.W.2d, at pp. 752 to 753; footnotes omitted.]

It is not necessary to parse the provisions of the PSC's confidentiality guidelines to determine which phrases or sentences constitute a "rule" and which material merely is an internal management procedure of the agency not requiring rule-making. It is enough to say that, if the agency follows its guidelines, legal consequences ensue. For example, under the guidelines, a public utility may protect the confidential status of its information for four years, although the agency retains ultimate discretion over access to that information. If the public utility does not follow the guidelines, its information is much more likely to be made publicly available. In contrast, members of the public seeking access to public utility information are less likely to achieve it if the guidelines are followed. Interests of individuals will be affected if these guidelines are used. Consequently, the guidelines have the "effect of law" and should be promulgated as an administrative rule.

A recent court of appeals decision is instructive on this point. In *Mack v. DHFS*, 231 Wis. 2d 644, 605 N.W.2d 651 (Ct. App. 1999), *rev. den.* 2000 Wisc. LEXIS 130, the court reviewed the agency's written guideline regarding recoupment of overpayments made to aid recipients. The court concluded that the agency policy met the definition of the term "rule" and should have been formally promulgated. The court stated:

When an administrative rule is properly promulgated, the process allows for public input and review. In her brief, (the plaintiff) succinctly describes why the formal rule-making process is important in a time when government agencies have expanded their policy-making functions.

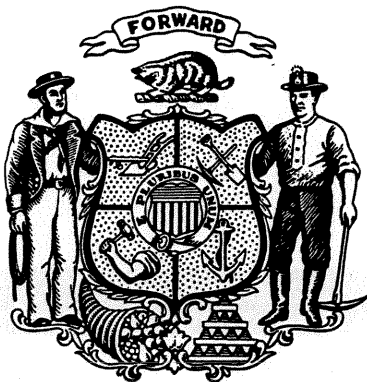
"The requirement of formal rule-making requires administrative agencies to follow a rational, public process. This requirement

ensures that administrative agencies will not issue public policy of general application in an arbitrary, capricious, or oppressive manner. Many public policy concerns could be illuminated through the rulemaking process. For example, the fact that the State SSI is a subsistence level program, whose benefits are exempt even from post-judgment garnishment might bear on the wisdom of reducing current State SSI payments. [Footnote omitted.]” [*Id.*, 605 N.W.2d at p. 654; for additional cases holding that guidelines are in fact rules, see *Will v. DHSS*, 44 Wis. 2d 507, 171 N.W.2d 378 (1970) and *State ex rel. Clifton v. Young*, 133 Wis. 2d 193, 394 N.W.2d 769 (Ct. App. 1986).]

If I can of any further assistance in this matter, please feel free to contact me.

RS:tlv;rv

END



END



DIVISION OF HEALTH CARE FINANCING

Tommy G. Thompson
Governor

1 WEST WILSON STREET
P.O. BOX 309
MADISON WI 53701-0309

Joe Lekan
Secretary

State of Wisconsin
Department of Health and Family Services

(608) 266-8922
FAX: (608) 266-1096
www.dhfs.state.wi.us

April 27, 1999

The Honorable Judith Robson
Joint Committee for Review of Administrative Rules Co-Chairman
Wisconsin State Senate
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Robson:

With the assistance of members of your committee and many other interested groups and individuals, Wisconsin Medicaid has completed a thorough review and revision of the prior authorization guidelines for the Private Duty Nursing (PDN) benefit.

In October 1997, the Department responded to requests from PDN consumers to revise Medicaid prior authorization guidelines by allowing more flexible use of the authorized hours of care. Although the new policy did not affect the number of daily hours individuals were authorized to receive, it allowed them to use their hours over periods of time up to eight weeks in length.

Amended PDN prior authorization guidelines were circulated for review and comment to all PDN recipients and their families and all Medicaid-certified PDN providers. Comments were also solicited from members of the Legislative Council Special Committee on Programs for Developmentally Disabled Persons, the Department of Health and Family Services Home Care Advisory Committee and the Home Care Consumer Advisory Committee, members of your committee and other interested members of the Legislature and the public. Respondents supported the flexible hours policy and made additional suggestions, many of which are incorporated into the PDN prior authorization procedures.

This mailing includes three documents that describe the revised policies:

- A copy of the revised guidelines Medicaid medical consultants are using to adjudicate PDN prior authorization requests;
- A copy of the new form recipients or their family members will be asked to sign on and after May 1, 1999, acknowledging they have reviewed the Plan of Treatment and the prior authorization request before a PDN provider submits them for consideration; and
- A copy of the brochure, *Wisconsin Medicaid Private Duty Nursing, A Guide for Wisconsin Medicaid Recipients and Their Families*.

Thank you for your help developing these policies.

Sincerely,

A handwritten signature in cursive script that reads "Peggy L. Bartels".

Peggy L. Bartels
Administrator

PLB:my
CH04165.SC

Enclosures

PRIOR AUTHORIZATION GUIDELINES MANUAL

CATEGORY OF SERVICE	PROVIDER TYPE(S) AFFECTED	GUIDELINE EFFECTIVE DATE
Private Duty Nursing	24, 33, 44, 45	Revised: 05/01/99 Revised: 07/14/97 Revised: 08/01/94 Revised: 01/92

PROCEDURE/SERVICE

Private Duty Nursing (LPN)/Ventilator Dependent	W9041* (TOS 1)
Private Duty Nursing (RN)/Ventilator Dependent	W9042* (TOS 1)
Private Duty Nursing (LPN)	W9045 (TOS 1)
Private Duty Nursing (RN)	W9046 (TOS 1)
Private Duty Nursing (LPN) (Provider Type 44 only)	W9030 (TOS 1)
Private Duty Nursing (RN) (Provider Type 44 only)	W9031 (TOS 1)

*W9041 and W9042 are also subject to the prior authorization guidelines for respiratory care services.

ADMINISTRATIVE RULES

1. The rule provisions from the following citations must be considered in adjudicating every PA request received:

Wisconsin Administrative Code HFS 107.02(3)(a) through (i) provides the Department with authority to require PA for covered services, procedures for PA documentation, and Departmental review criteria used to authorize coverage and reimbursement.

In addition, Wisconsin Administrative Code HFS 106.02(9)(a) through (g) requires providers to prepare and maintain medical and financial record keeping and documentation for all services provided recipients, and to provide such record keeping and documentation as requested by the Department in order to determine Wisconsin Medicaid coverage and reimbursement.

Effective Date: 06/95 **Reference:** HFS 107.02
HFS 106.02

2. Prior authorization is required for all private duty nursing (PDN) services.

Effective Date: 06/95 **Reference:** HFS 107.12

3. Private duty nursing is skilled nursing provided for recipients with medical conditions requiring more continuous skilled care than can be provided on a part-time, intermittent basis. Only a recipient who requires 8 or more hours of skilled nursing care in a 24-hour period is authorized to receive these services in the home setting or may make use of the approved hours outside of that setting during those hours when normal life activities take him or her outside of that setting. PDN may be provided according to the requirements under ss. HFS 105.16 and 105.19 when the written plan of care specifies the medical necessity for this type of service.

PDN services provided by a certified registered nurse (RN) in independent practice are those services prescribed by a physician which comprise the practice of professional nursing as described under s. 441.11 (3), Stats., and s. N 6.03. PDN services provided by a certified licensed practical nurse (LPN) are those services which comprise the practice of practical nursing under s. 441.11 (4), Stats., and s. N 6.04.

An LPN may provide PDN services delegated by a RN as delegated nursing acts under the requirements of ch. N 6 and guidelines established by the state board of nursing.

Services may be provided only when prescribed by a physician and the prescription calls for a level of care which the nurse is licensed and competent to provide.

Effective Date: 05/95

Reference: HFS 107.12

4. Patient rights. A nurse shall provide a written statement of the rights of the recipient for whom services are provided to the recipient or guardian or any interested party prior to the provision of services. The recipient or guardian shall acknowledge receipt of the statement in writing. The nurse shall promote and protect the exercise of these rights and keep written documentation of compliance with this subsection. Each recipient receiving care shall have the following rights:
 - a. To be fully informed of all rules and regulations affecting the recipient;
 - b. To be fully informed of services to be provided by the nurse and of related charges, including any charges for services for which the recipient may be responsible;
 - c. To be fully informed of one's own health condition, unless medically contraindicated, and to be afforded the opportunity to participate in the planning of services, including referral to a health care institution or other agency;
 - d. To refuse treatment to the extent permitted by law and to be informed of the medical consequences of that refusal;
 - e. To confidential treatment of personal and medical records and to approve or refuse their release to any individual, except in the case of transfer to a health care facility;
 - f. To be taught, and have the family or other persons living with the recipient taught, the treatment required, so that the recipient can, to the extent possible, help himself or herself, and the family or other party designated by the recipient can understand and help the recipient;
 - g. To have one's property treated with respect; and
 - h. To complain about care that was provided or not provided, and to seek resolution of the complaint without fear of recrimination.

Effective Date: 05/95

Reference: HFS 105.16(10)(b)

5. Physician's prescription. Services may be provided only when prescribed by a physician and the prescription calls for a level of care which the nurse is licensed and competent to provide.

Effective Date: 07/97

Reference: HSF 107.12 (1)(c)

6. Plan of Care (POC). For purposes of ss. HFS 105.16, 105.19, 107.11, 107.113 and 107.12, a written plan of care for a recipient must be prescribed and periodically reviewed by a physician and developed in consultation with the agency staff which covers:

- a. All pertinent diagnoses;
- b. Mental status;
- c. Type of services and equipment required;
- d. Frequency of visits;
- e. Prognosis;
- f. Rehabilitation potential;
- g. Functional limitations;
- h. Activities permitted;
- i. Nutritional requirements;
- j. Medications and treatments;
- k. Any safety measures to protect against injury;
- l. Instructions for timely discharge or referral; and
- m. Any other appropriate items.

If a physician refers a patient under a POC that cannot be completed until after an evaluation visit, the physician is consulted to approve additions or modifications to the original plan.

Effective Date: 06/95

Reference: HFS 101.03 (124m)

7. Medically necessary. A medical assistance service under ch. HFS 107 that:

- a. Is required to prevent, identify or treat a recipient's illness, injury or disability; and
- b. Meets the following criteria:
 - (1) Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 - (2) Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
 - (3) Is appropriate with regard to generally accepted standards of medical practice;
 - (4) Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 - (5) Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 - (6) Is not duplicative with respect to other services being provided to the recipient;
 - (7) Is not solely for the convenience of the recipient, the recipient's family or a provider;
 - (8) With respect to PA of a service and to other prospective coverage determinations made by the Department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 - (9) Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Effective Date: 06/95

Reference: HFS 101.03 (96m)

8. "Department review criteria." In determining whether to approve or disapprove a request for prior authorization, the department shall consider:
- a. The medical necessity of the service;
 - b. The appropriateness of the service;
 - c. The cost of the service;
 - d. The frequency of furnishing the service;
 - e. The quality and timeliness of the service;

- f. The extent to which less expensive alternative services are available;
- g. The effective and appropriate use of available services;
- h. The misutilization practices of providers and recipients;
- i. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
- j. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
- k. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
- l. The professional acceptability of unproven or experimental care as determined by consultants to the Department.

Effective Date: 07/97

Reference: HSF 107.02 (3)(e)

CONSIDERATIONS/DISPOSITION OF PA REQUEST

Special Consideration

1. All requests must be referred by the fiscal agent to the Division of Health Care Financing nurse and physician consultants for review.
2. Physician's prescription:
 - a. All requests must be accompanied by a physician's prescription or physician's POC, signed and dated within three months of receipt by the fiscal agent.
 - b. If a physician's prescription for "PRN visits/hours" does not state the number of hours prescribed, the request will be returned to the provider.
 - c. If the provider is requesting backdating, the physician's prescription must apply to dates of service requested.
3. The written POC must indicate the diagnosis, specific medical orders, specific services required, and the intensity and duration of services to be provided.
4. If the information on the request does not clearly portray the recipient's clinical picture, return the request for further documentation.

5. If the request for PA does not include a statement, signed by the recipient or the recipient's guardian, that says the signer has read the Plan of Treatment and the Prior Authorization Request or the Prior Authorization Amendment Request, return the request to the provider for completion.
6. PDN cases that meet the criteria to enroll in the voluntary Health Care Connections (HCC) case management program should be informed of the opportunity to permit recipient and caregiver optimum coordination and quality of care.
7. If two or more providers are sharing a case, this information must be included on the PA/RF, e.g., "We are sharing this case with ACME agency."
8. Amendments:
 - a. When a request for amendment is received and is incomplete, return the request to the provider, attaching a Prior Authorization Request Form (PA/RF) Amendment Instruction Sheet and the Amendment Information Form, noting the omitted/erroneous item(s).
 - b. In the event that unexpected circumstances require additional PDN hours, PA amendments allowing extended care may be backdated up to two weeks, (e.g. illness of primary care giver requires additional hours of PDN coverage that cannot be addressed solely with flexibility).
 - c. In the event that the recipient's condition improves to the point that fewer hours of PDN coverage are appropriate, the provider must submit an amendment reflecting that reduced need.
9. If the provider is requesting that an authorization be backdated, rationale for backdating must be included in the request (PA/RF form). Backdating is allowed on the initial PA request only under limited circumstances.
10. If the request is for PDN services for a nursing home or inpatient hospital recipient, return the request for clarification of start date for care and plan of care.
11. If the request is received more than 8 weeks prior to the requested grant date, return the request to the provider for clarification.
12. If a visit is not rounded to the nearest 1/2 hour increment on the request, return the request to the provider for correction.
13. An independent PDN may provide no more than 12 hours care in a 24 hour period, nor more than 60 hours care in a calendar week, all Medicaid recipients combined.

Approval Criteria

1. The request must include a diagnosis and associated ICD-9-CM code.
2. The services requested must be skilled nursing care.
3. A request for LPN services must indicate a supervising RN or physician.
4. The recipient does not have to be confined to the residence to receive PDN service. Services may be provided outside the place of residence, i.e., school, medical appointments, other.
5. The service(s) requested must be equal to or less than that prescribed by the physician. If the services requested are less than the hours prescribed, the POC must indicate who will provide the balance of care.
6. One POC must be used for the recipient for each provider type, regardless of the number of providers.
7. The request must indicate the extent to which family/caregivers are capable (physically, emotionally, intellectually) of providing medical cares and that the provider is helping recipients and their families assume greater responsibilities for care by providing instruction, counseling and guidance.
8. The PA must be adjudicated consistent with the following Departmental review criteria as set forth in the administrative rules quoted above:
 - a. The medical necessity of the service;
 - b. The appropriateness of the service;
 - c. The cost of the service;
 - d. The frequency of furnishing the service;
 - e. The quality and timeliness of the service;
 - f. The extent to which less expensive alternative services are available;
 - g. The effective and appropriate use of available services;
 - h. The misutilization practices of providers and recipients;
 - i. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;

- j. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
- k. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
- l. The professional acceptability of unproven or experimental care as determined by consultants to the Department.

Denial Criteria

1. The request does not meet one or more of the Approval Criteria.
2. The requested care does not require a skilled nurse.
3. The recipient resides in a hospital or nursing home.

Disposition

1. All PA dispositions must respect the singular characteristics of the in-home circumstances as well as be reasonable, logical, consistent and predictable.
2. The number of hours of PDN care allowed is determined by the type, character, timing and intensity of medically necessary and appropriate skilled services, the stability and predictability of the recipients clinical course and the availability/capability of the family/caregivers.
3. The number of daily hours authorized should reflect the daily care needs of the recipient. Recipients may use the authorized hours flexibly over an 8-week period.
4. If the request states that care will be performed by either RN or LPN, grant the identical quantity for each to allow the agency to bill for either RN or LPN, or both, and write on PA request "not to exceed _____ hours" (total number of services allowed for RN or LPN).
5. To determine the hours of PDN care for children, consider the extent to which family/caregivers are capable of providing medical cares:
 - a. 24 hours/day PDN care is permitted in the following circumstances:
 - (1) Short-term, after institutional discharge or after in-home exacerbations with significant changes, to allow time to teach family/caregivers and to stabilize child and develop routine care techniques.
 - (2) Short-term, if single family/caregiver is hospitalized or if one family/caregiver is hospitalized and the other is not capable of providing any cares. 24 hours/

day PDN can fill gap until other caregivers can be taught cares, or until usual family/caregiver can resume them.

- (3) If family/caregivers are not capable of providing any needed cares.
- b. Cover family/caregiver work-time:
 - (1) If family/caregiver works at home, medically necessary PDN/services depend on several factors, including the amount of care and direct monitoring the child needs, the location of family/caregiver work, etc.
 - (2) If family/caregiver works outside the home, a reasonable number of hours of PDN should be allowed to account for family/caregiver absence from cares for work and commuting to work.
- c. Cover family/caregiver sleep time if overnight PDN is medically necessary:
 - (1) PDN may be covered for the night shift so that the family/caregiver can sleep.
 - (2) Sleep time may be during the day if family/caregiver works nights. An overall schedule of child's school time, family/caregiver work schedule and other pertinent information is considered in determining the required hours of PDN care.
- d. Cover time for family or other similar responsibilities of family/caregiver.
- e. Cover child's school hours when it is medically necessary for PDN to accompany child to school:
 - (1) In many cases, the child meets Medicaid's eligibility criteria for PDN, but is cared for at school by nurses' aides or laypersons, with a school RN available as needed. Some other PDN-eligible children do not attend school due to risk of infections. But many have the PDN accompany them to school.
6. If the request meets the Approval Criteria #1-8, approval can be granted up to, but not to exceed, 12 months.
7. If the request meets any of the Denial Criteria, the request will be denied, with documentation of the reason for denial on the request form.
8. If the number of hours requested must be reduced to meet the Approval Criteria, the Nurse Consultant will modify the PA and inform the provider. The provider should notify the recipient or family/caregiver of that reduction. (Recipient will also receive notice from the Department of the reduction and of their appeal rights.)
9. If the provider agrees to modify the request by reducing the number of hours, the provider must inform the recipient or family/caregiver of that change prior to the submission of the request. The provider is also required to document that communication.

**WISCONSIN MEDICAID
Private Duty Nursing
Prior Authorization Acknowledgement**

Recipient Name: _____

P.A. # _____

I have read the attached Plan of Treatment and the Prior Authorization Request.

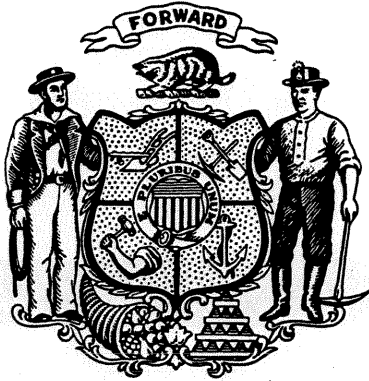
Signed: _____
Recipient or recipient's parent, guardian, or legal representative

Relationship: _____
If other than recipient

Date: ____ / ____ / ____

Instructions to PDN Provider: Return this signed and dated statement with the Prior Authorization Request (PA/RF) or the Prior Authorization Amendment.

END



END

Moved -

Policy to rule re when recoup,
when educate, when other sanction

Welch = explain what doing? Then
consider whether to order
promulgation.

Kreuser = if guidelines not written, cannot
go back and ask for re-payment

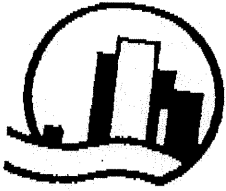
Grothman = do we want this to be public?
Are we inviting abuse?

ltr to agency to be considered at next mtg?
yes

END



END



Citizens for a
Better
Environment

FAX MEMO

Citizens for a Better Environment
152 W. Wisconsin Ave., Suite 510
Milwaukee, WI 53203
Fax 414/271-5904 • Phone 414/271-7280

262-3645

DATE: 4/24

TO: Sen. JUDY REBSON

FOR TOMORROW'S
MEETING.

FROM: SUSAN MUDD

OF PAGES TO FOLLOW: 2

HEALTHY SCHOOLS BILL COMPONENTS

We currently envision this program being housed in the Department of Public Instruction with a memorandum of understanding (MOU) developed between DPI and UW Extension. UWEX, with expertise in pesticides and IPM education, would provide education and training to school personnel while DPI, with expertise on school and school health issues, would provide administrative oversight and support to schools.

Every school or school district in WI would be required to develop and implement an IPM policy with at least the following components:

1. Definition of Least Toxic IPM
"An economical and environmentally sensitive approach to pest management which utilizes proper identification of pest problems and regular monitoring to determine if and when pests are at levels severe enough to require treatment. Physical, mechanical, cultural, biological and chemical methods are used to prevent unacceptable levels of pest activity and damage, with the least hazard to people, property, and the environment. Least toxic chemical controls are used as a last resort."
2. Routine Spraying Eliminated - No routinely schedule spraying (weekly, monthly, seasonal) will be made. No pesticide fogging will be done.
3. Reporting - Reporting of pesticide users/ applicators will include:
 - a. Pesticide applicator name and certification number
 - b. Pesticide applied
 - c. Amount of pesticide applied
 - d. Amount and type of pesticide inert ingredient if different from pesticide product
 - e. How pesticide was applied (broadcast spray, granular etc.)
 - f. Location and area of pesticide application including as applicable address, county, zip code
 - g. Date and time of application
 - h. Symptoms of acute poisoning associated with the pesticide
 - i. Location to which pesticide was applied (playgrounds, cafeteria etc.)
 - j. Purpose of application including target pest, site to be treated, preventative or reactive application
 - k. Local conditions (weather, wind, temperature, humidity)

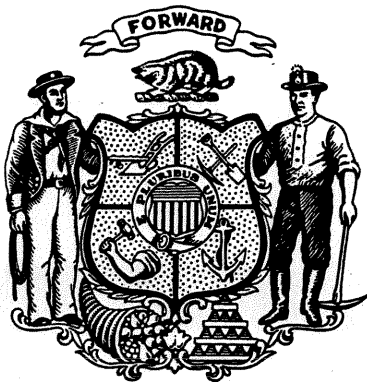
This information would be held locally by the school/district and reported annually to the state (DATCP if Pesticide Database System is created).

Parents/teachers/guardians/medical personnel etc. would have access to it as needed anytime.

5. Notification - Advance written notification (at least 72 hours) to students, teachers, workers, neighboring citizens, parents, guardians what pesticide will be used, when, where in and around schools as well as their health effects.

6. Certification/Training Program - Certify pest control personnel in Least Toxic IPM. Provide funding to have UWEX train school personnel in Least Toxic IPM.
7. Posting - Post all pesticide applications at time of application, should remain up for at least 72 hours afterward.
8. School Board Insurance - Require school boards to review liability and property insurance policies to determine whether schools are insured in cases of exposure to or harm from pesticide use.
9. Appeal - Any person shall have the right to file a written appeal to the school regarding a proposed pesticide application with a copy to DATCP/DPI.
10. Evaluation - DPI/DHFS/UWEX report to legislature
11. Memorandum of Understanding - Legislature would direct DPI and UWEX to develop a MOU with respect to school IPM and pesticide use. DATCP and DHFS should be consulted with respect to school IPM and pesticide use. DATCP and DHFS should be consulted with respect to pesticide use reporting and/or student and/or worker health.

END



END



Z I G M A N · J O S E P H · S T E P H E N S O N

**Statement Regarding Tax Exemptions for Recycling Equipment
on Behalf of Waste Management, February 25, 1999**

Thank you for the opportunity to provide information regarding the tax exemption for recycling equipment under s. 77.54(26m). Waste Management's position is that the exemption has been interpreted too narrowly by the Department of Revenue, to the detriment of recycling.

Waste Management provides recycling services to some 691,000 Wisconsin households and more than 25,000 Wisconsin businesses. DOR has maintained that the tax exemption for recycling equipment does not apply to residential and commercial recycling bins, trucks, and processing equipment. Apparently, DOR's definition of "recycling" includes only manufacturing activity and excludes the collection and processing of recyclables. We have several concerns regarding that interpretation.

First, the limited availability of the exemption creates disparities between communities served by private recyclers and those deploying municipal crews to recycle. A 1996 Legislative Council analysis found that 57% of the state's population is served by private recycling collection services and 95 of Wisconsin's 147 recycling processing facilities are privately owned. Equipment owned by private recyclers is taxed, increasing the cost to serve those customers. Municipalities, in contrast, use equipment exempt from sales and personal property taxes. There is no justification for this inconsistency.

Second, DOR's narrow definition of recycling seems to include only equipment already exempted under Wisconsin's manufacturing and equipment exemption. What, if any, exemptions have been allowed under the recycling exemption that would not have been allowed anyway? It is likely that in creating the exemption for recycling equipment the Legislature intended to encompass activities not already covered under other exemptions.

Third, we submit that the segregation, collection and processing of recyclables is an essential part of recycling. The Department's policy in this regard is confusing. Why is a conveyor used to sort paper within a paper mill exempt, while the same conveyor used at a recycling center to sort paper for transport to that mill is not exempt? Why are devices used to remove contaminants from factory wastes exempt if they allow those wastes to then be recycled, while devices used to remove contaminants from recyclables for the same purpose are not? The fact is, recycling would not occur were it not for the containers, trucks and sorting facilities that allow recyclables to be separated and economically transported for use as raw materials in manufacturing.

Thank you for any assistance your Committee is able to provide in establishing a fair and appropriate tax policy for recycling equipment. Tom Liebe (608/255-0566) or Lynn Morgan (414/273-4680) would be happy to answer any questions.

and also applies to chemicals and supplies used or consumed in operating a waste treatment facility and to purchases of tangible personal property made by construction contractors who transfer such property to their customers in fulfillment of a real property construction activity. This exemption does not apply to tangible personal property installed in fulfillment of a written construction contract entered into, or a formal written bid made, prior to July 31, 1975.

(26m) The gross receipts from the sale of and the storage, use or other consumption of waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For the purposes of this subsection, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semi-solid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

(27) The gross receipts from the sale of semen used for artificial insemination of livestock.

(28) The gross receipts from the sale of and the storage, use or other consumption of or by the ultimate consumer of apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar level.

(29) The gross receipts from the sales of and the storage, use or other consumption of equipment used in the production of maple syrup.

(30) (a) The gross receipts from the sale of:

1. Coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel sold for residential use.

2. Electricity and natural gas sold during the months of November, December, January, February, March and April for residential use.

3. Electricity sold during the months of November, December, January, February, March and April for use in farming, including but not limited to agriculture, dairy farming, floriculture and horticulture.

4. Any residue that is used as fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust, shavings, edgings, slabs, leaves, wood chips, bark and wood pellets manufactured primarily from wood or primarily from wood residue.

5. Fuel sold for use in farming, including but not limited to agriculture, dairy farming, floriculture and horticulture.

(b) For purposes of this subsection, electricity or natural gas is considered sold at the time of billing. If the billing is by mail, the time of billing is the day on which the billing is mailed.

(c) If fuel or electricity is sold partly for a use exempt under this subsection and partly for a use which is not exempt under this subsection, no tax shall be collected on that percentage of the gross receipts equal to the percentage of the fuel or electricity which is used for an exempt use, as specified in an exemption certificate provided by the purchaser to the seller.

(d) In this subsection "residential use" means use in a structure or portion of a structure which is a person's permanent residence, but does not include use in transient accommodations, as specified in s. 77.52 (2) (a) 1., motor homes, travel trailers or other recreational vehicles.

(e) For purposes of this subsection, a seller of electricity or natural gas is not required to comply with the requirement of obtaining exemption certificates under s. 77.52 (13) for sales of electricity or natural gas to accounts not covered by par. (c) which are properly classified as residential or farms pursuant to schedules which are filed for rate tariff purposes with the public service com-

mission under s. 196.19 and which are in force at the time of the sales or are properly so classified for classification purposes as directed by the federal rural electrification administration. Nothing in this paragraph shall be construed to broaden the exemption specified in par. (a).

(f) Sellers of coal, fuel oil, propane, steam, peat, fuel cubes produced from solid waste and wood used for fuel shall not be required to obtain an exemption certificate under s. 77.52 (13) from a purchaser if all the fuel sold is for residential use and the seller maintains adequate records to identify which sales are exempt.

(31) The gross receipts from the sale of and the storage, use or other consumption in this state, but not the lease or rental, of used mobile homes that are primary housing units under s. 340.01 (29).

(32) The gross receipts from charges, including charges for a search, imposed by an authority, as defined in s. 19.32 (1), for copies of a public record that a person may examine and use under s. 16.61 (12) or for copies of a record under s. 19.35 (1).

(33) The gross receipts from sales of and the storage, use or other consumption of medicines used on farm livestock, not including workstock.

(34) The gross receipts from the sale of and the storage, use or other consumption of milk house supplies used exclusively in producing and handling milk on dairy farms.

(35) The gross receipts from the sales of tangible personal property, tickets or admissions by any baseball team affiliated with the Wisconsin Department of American Legion baseball.

(36) The gross receipts from the rental for a continuous period of one month or more of a mobile home, as defined in s. 66.058 (1) (d), that is used as a residence. In this subsection, "one month" means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of the rental.

(37) The gross receipts from revenues collected under s. 146.70 (3).

(38) The gross receipts from the sale of and the storage, use or other consumption of snowmobile trail groomers and attachments for them that are purchased, stored, used or consumed by a snowmobile club that meets at least 3 times a year, that has at least 10 members, that promotes snowmobiling and that participates in the department of natural resources' snowmobile program under s. 350.12 (4) (b).

(39) The gross receipts from the sale of and the storage, use or other consumption of off-highway, heavy mechanical equipment such as feller bunchers, slashers, delimiters, chippers, hydraulic loaders, loaders, skidder-forwarders, skidders, timber wagons and tractors used exclusively and directly in the harvesting or processing of raw timber products in the field by a person in the logging business. In this subsection, "heavy mechanical equipment" does not include hand tools such as axes, chains, chain saws and wedges.

(40) The gross receipts from the sale, lease or rental of and the storage, use or other consumption of cloth diapers.

(41) The gross receipts from the sale of building materials, supplies and equipment to; and the storage, use or other consumption of those kinds of property by; owners, contractors, subcontractors or builders if that property is acquired solely for or used solely in, the construction, renovation or development of property that would be exempt under s. 70.11 (36).

(42) The gross receipts from the sale of and the storage, use or other consumption of animal identification tags provided under s. 93.06 (1h) and standard samples provided under s. 93.06 (1s).

(43) The gross receipts from the sale of and the storage, use or other consumption of raw materials used for the processing, fabricating or manufacturing of, or the attaching to or incorporating into, printed materials that are transported and used solely outside this state.

History: 1971 c. 64, 154, 215, 311; 1973 c. 90, 156, 240; 1975 c. 39, 96, 102, 146, 200; 1977 c. 29; 1977 c. 83 ss. 13, 26; 1977 c. 250, 368, 418; 1979 c. 1, 34, 87, 174;

Wisconsin Sales and Use Tax Selected Topics

Table of Contents

	Page
I. Computer Hardware, Software, and Other Related Matters	1
II. Internet-Related Services	7
III. Waste Reduction and Recycling Exemptions	10
IV. Use Tax	15
V. Tips to Help Your Clients Survive the Battlefield of Sales and Use Taxes	21

Randy Lovell, CPA
Wisconsin Department of Revenue
November 1997

III. Waste Reduction and Recycling Exemptions

A. Background

Effective July 1, 1984 (1983 Wis. Act 426), the Wisconsin Statutes provide 2 sales and use tax exemptions relating to waste reduction and recycling activities.

- Motor vehicles not required to be registered for highway use.
- Machinery and equipment used exclusively and directly in waste reduction and recycling activities.

B. Wisconsin Statutes

1. Motor Vehicles

Section 77.54(5)(c), Wis. Stats. (1995-96), provides an exemption for "Motor vehicles which are not required to be licensed for highway use and which are exclusively and directly used in conjunction with waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. For the purposes of this paragraph, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities."

Five Requirements of Motor Vehicle Exemption —

- (1) Item must be a motor vehicle.
- (2) Vehicle must NOT be required to be licensed for highway use.
- (3) Vehicle must be used "exclusively" in conjunction with waste reduction or recycling activities.
- (4) Vehicle must be used "directly" in conjunction with waste reduction or recycling activities.
- (5) Waste reduction or recycling activity must either:
 - a) reduce the amount of solid waste generated,
 - b) reuse solid waste,

- c) recycle solid waste,
- d) compost solid waste, or
- e) recover energy from solid waste.

2. Machinery and Equipment

Section 77.54(26m), Wis. Stats. (1995-96), provides an exemption for "The gross receipts from the sale of and the storage, use or other consumption of waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For the purposes of this subsection, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities."

Four Requirements of Machinery and Equipment Exemption —

- (1) Item must be machinery and equipment, or parts of machinery and equipment (supplies do not qualify).
- (2) Item must be used "exclusively" in waste reduction or recycling activities.
- (3) Item must be used "directly" in waste reduction or recycling activities.
- (4) Waste reduction or recycling activity must either:
 - reduce the amount of solid waste generated,
 - reuse solid waste,
 - recycle solid waste,
 - compost solid waste, or
 - recover energy from solid waste.

C. Analysis of Terms Used in the Exemptions

1. What is "solid waste"?

Section 77.54(26m), Wis. Stats. (1995-96), defines "solid waste" to mean "...garbage, refuse, sludge or other materials or articles, whether

these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities."

Examples - Aluminum cans, food wastes, and grass clippings are solid waste.

2. What does "reduce the amount of solid waste generated" mean?

Example - A machine shop has a cutting machine. The cutting machine has a cleaning attachment which removes impurities from the coolants and oils used in the cutter. This enables the coolants and oils to be reused, thereby reducing the amount of coolant and oil that is discarded. The cleaning attachment reduces the amount of solid waste generated.

Example - Simply crushing a can does not reduce the amount of solid waste generated. Although it may reduce the "size" of the piece of solid waste, it does not reduce the "amount" of solid waste generated.

3. What does "reuse solid waste" mean?

Example - A company is in the business of making diapers. Throughout the diaper manufacturing process, fibers are "lost." Rather than just collecting the fibers and discarding them, a machine is used to remove the fibers from the air and direct the fibers back into the diaper manufacturing process. The "waste" fibers are reused in making new diapers.

4. What does "recycle solid waste" mean?

Example - Aluminum cans are chipped, shredded, etc. and then used in making new aluminum cans.

5. What does "compost solid waste" mean?

Example - Lawns are mowed and the clippings are caught and placed in a composting bin where the clippings decay.

6. What does "recover energy from solid waste" mean?

Example - Burning waste oil in a furnace to heat a building.

D. How to Claim the Waste Reduction and Recycling Exemption

Complete Form S-207, Certificate of Exemption. Check box 8, and indicate "Machinery and Equipment Used Exclusively and Directly in Waste Reduction and Recycling Activities."

E. Examples of Equipment Which Is Exempt Under Waste Reduction and Recycling Exemptions

- Equipment used in a foundry to clean sand so that the sand can be reused.
- Equipment used to remove impurities from lubricating oil so that the oil can be reused.
- Equipment used to produce fuel cubes.
- Equipment that "mines" old roads, sidewalks, etc. and grinds up these items so that the resulting materials can be reused rather than sent to a landfill.
- Equipment used in a "refuse derived fuel" plant which produces electricity by burning a mixture of refuse and wood in the utility's boilers.
- Equipment used in the packaging of milorganite, which was produced from sewage, and which will be distributed to customers who will use it as fertilizer.
- A furnace designed to burn used motor oil.
- **Balers used by persons in the recycling business who use the balers exclusively and directly in waste reduction and recycling activities. (Note: If the balers are also used for storage, collection, and transporting bales, the equipment may be taxable - infrequent and sporadic use allowed.)**
- Balers used by manufacturers who bale "waste" by-products (i.e., scrap paper baled by a paper manufacturer) and (a) sell them to a recycler, (b) give them to a trucking company in exchange for transportation costs, (c) sell them to farmers for use as animal bedding, (d) return the paper to the manufacturing process to be combined with other raw materials, or (e) burn the scrap paper as a fuel.

- A company that is in the business of removing trees and brush in undeveloped areas and that uses a "brontosaurus" (a pulverizer) to pulverize the trees and brush into small pieces which remain on the ground to compost.
- A stump cutter which "removes" stumps by grinding them into small chips which are left to compost or fill in the hole from the stump.
- A crane which is used exclusively at a recycling plant to move metal, that has been stockpiled, to the machinery which processes the metal.
- A vapor recovery system used at a service station that prevents the release of gaseous vapors into the air and directs the vapors back to the underground tank where the vapors return to gasoline through temperature changes.
- A front-end loader, soil burning unit and screener used exclusively and directly in recycling contaminated soil.
- A paper shredder that is used to make animal bedding.

F. Examples of Equipment Which Is NOT Exempt Under Waste Reduction and Recycling Exemptions

- Can crusher used in your home.
- Dumpsters.
- Waste containers that compact the waste.
- Paper shredder used to destroy confidential records.
- Chain saw used to cut down diseased trees.
- Shelving in a used bookstore or any retail store that sells used goods.
- Furnaces which are designed to burn bio-mass pellets even though the bio-mass pellets may have been produced from solid waste.
- Equipment used to recover freon, but not reuse it.
- Balers used in compacting cardboard by a person who does not recycle waste.

- Balers used by a manufacturer to bale scrap materials which are sent to a landfill.
- Tub grinders which reduce the size of branches, leaves, newspapers, magazines, and other paper products which go to a landfill.
- Bobcats and loaders used by a company to unload scrap tires, sort the tires and then reload the tires onto trucks for delivery to other companies which recycle the tires.

IV. Use Tax

A. The Law

Wisconsin use tax is a 5% tax imposed on the sales price of tangible personal property or taxable services that are used, stored, or consumed within Wisconsin, upon which a Wisconsin sales or use tax has not previously been paid.

Caution: Don't forget about county and stadium use taxes.

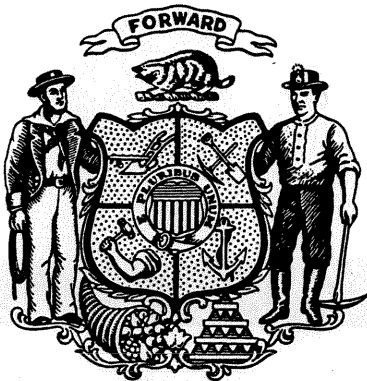
B. Property Stored or Used in Wisconsin and Then Removed for Use Out-of-State

1. Purchases of tangible personal property, with certain exceptions, (e.g., printed advertising materials) are subject to Wisconsin use tax if the tangible personal property is stored, used, or consumed in Wisconsin, regardless of whether the property is subsequently used outside Wisconsin.

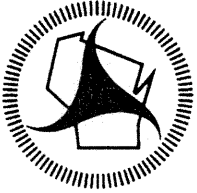
Example: A Wisconsin corporation which has branch offices in Minnesota, purchases from Supplier X located outside Wisconsin, computers for use in its branch offices. Supplier X does not have nexus in Wisconsin and is not registered to collect Wisconsin sales or use tax. Supplier X has the computers shipped to Wisconsin by common carrier. The computers are stored in Wisconsin by the Wisconsin corporation and subsequently shipped to its branch offices in Minnesota for installation and set-up. The computers are subject to Wisconsin use tax.

2. Tangible personal property which is stored, used, or consumed in Wisconsin, and later incorporated into real property in or outside Wisconsin, is subject to Wisconsin use tax on the purchase price of the property. Also, the storage of tangible personal property (e.g., raw materials) prior to a manufacturing process and the storage of

END



END



JUN 05 2000

3

Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson
Governor

Terrence D. Mulcahy, P.E.
Secretary

Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P.O. Box 7910
Madison, WI 53707-7910

Telephone: 608-266-8810
FAX: 608-267-6734
E-Mail: ogc.exec@dot.state.wi.us

May 30, 2000

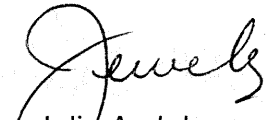
Mr. Gary L. Poulson, Deputy Revisor
Revisor of Statutes Bureau
131 West Wilson Street
Suite 800
Madison, Wisconsin 53703

RE: **PUBLIC NOTICE**

Dear Mr. Poulson:

Enclosed is a Public Notice for publication. Please publish in accordance with § 85.515, Stats., as created by Section 1g of 1997 Wis. Act 84, and as amended by 1999 Wis. Act 9, in the Administrative Register.

Sincerely,


Julie A. Johnson
Paralegal

Enclosures

cc: Senator Judy Robson, Co-Chair/JCRAR
Representative Glenn Grothman, Co-Chair/JCRAR
Alice Morehouse
Mike Goetzman
Roger Cross
Anna Biermeier
John Alley

PUBLIC NOTICE

State of Wisconsin, Department of Transportation

Public Notice of August 1, 2000, effective date for Sections 7, 12, 14, 15, 18, 39, 40, 43, 49, 50, 51, 52, 53, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, and 80 of 1997 Wis. Act 84, sections 2750 and 2751 of 1999 Wis. Act 9, and all sections of 1999 Wis. Act 143.

Section 85.515, Stats., as created by section 1g of 1997 Wis. Act 84 ("the Act"), and amended by 1999 Wis. Act 9, permits the Secretary of the Department of Transportation to implement provisions of 1997 Wis. Act 84 as the Department's computerized information systems become operational. Section 9450(1) of 1999 Wis. Act 9 and section 9 of 1999 Wis. Act 143 permit the Secretary to implement related amendments to the vehicle code in the same manner.

The Department's computerized information systems will be able to implement the statutory changes set forth in sections 7, 12, 14, 15, 18, 39, 40, 43, 49, 50, 51, 52, 53, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, and 80 of 1997 Wis. Act 84, sections 2750 and 2751 of 1999 Wis. Act 9, and all sections of 1999 Wis. Act 143 as of August 1, 2000.

By this public notice, and under the authority of s. 85.515, Stats., as created by section 1g of 1997 Wis. Act 84, and as amended by 1999 Wis. Act 9, section 9450(1) of 1999 Wis. Act 9 and section 9 of 1999 Wis. Act 143, Terrence D. Mulcahy, Secretary of the Wisconsin Department of Transportation, declares that the following sections of 1997 Wis. Act 84, 1999 Wis. Act 9 and 1999 Wis. Act 143 shall be effective as of August 1, 2000:

<u>Sections made Effective</u>	<u>Affected Statutory Sections</u>
1997 Wis. Act 84 Section 7	343.06(2)
1997 Wis. Act 84 Section 12	343.10(8)
1997 Wis. Act 84 Sections 14 and 15	343.18(3)
1997 Wis. Act 84 Section 18	343.30(1g)
1997 Wis. Act 84 Section 39	343.31(1)(h)
1997 Wis. Act 84 Section 40	343.31(1)(hm)
1997 Wis. Act 84 Section 43	343.31(2m)
1997 Wis. Act 84 Sections 49 to 51	343.31(3)(g), (h) and (4)

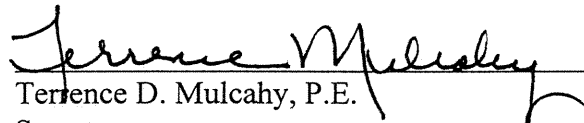
Sections made Effective

1997 Wis. Act 84 Sections 52 and 53
1997 Wis. Act 84 Sections 64 and 65
1997 Wis. Act 84 Sections 67 to 80
1999 Wis. Act 9 Section 2750
1999 Wis. Act 9 Section 2751
1999 Wis. Act 143 Section 1
1999 Wis. Act 143 Section 2
1999 Wis. Act 143 Section 3
1999 Wis. Act 143 Section 4
1999 Wis. Act 143 Section 5
1999 Wis. Act 143 Section 6
1999 Wis. Act 143 Section 7
1999 Wis. Act 143 Section 8
1999 Wis. Act 143 Section 9

Affected Statutory Sections

343.315(1)
343.38(2) and (3)
343.44
343.44(2)(a)
343.44(2)(am)
343.30(1g)(b)
343.31(1)(f)
343.31(1)(hm)
343.38(1)(c)2.d.
343.44(2)(am)
343.44(2)(b)
343.44(2r)
Nonstatutory provision
Nonstatutory provision

Dated this 26th day of May, 2000.


Terrence D. Mulcahy, P.E.
Secretary
Wisconsin Department of Transportation

For Information regarding this notice, contact the Compliance and Restoration Section of the Division of Motor Vehicles, Phone: (608) 266-2261, FAX: (608) 267-3812, Mailing address: P.O. Box 7917, Madison, WI 53707