

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

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

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
- 97hrAC-EdR\_RCP\_pt02

- Appointments ... Appt
- 
- Clearinghouse Rules ... CRule
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- Committee Hearings ... CH
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- Committee Reports ... CR
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- Executive Sessions ... ES
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- Hearing Records ... HR
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- Miscellaneous ... Misc
- 97hr\_JCR-AR\_Misc\_pt21c
- Record of Comm. Proceedings ... RCP
-

JCRAE - 1/30/98



State of Wisconsin  
Department of Health and Family Services

Tommy G. Thompson, Governor  
Joe Leman, Secretary



July 10, 1998

The Honorable Robert Welch, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 201, One East Main  
Madison, Wisconsin

Dear Senator Welch:

The Department of Health and Family Services has two emergency rulemaking orders in effect that will expire before permanent rules replace the emergency rules unless the effective periods of the emergency rules are extended. Pursuant to s. 227.24 (2), Stats., I ask the Joint Committee to extend the effective periods of these emergency rules by the number of days indicated below. The emergency rules are as follows:

(1) **Health Insurance Premium Subsidies for Certain Persons with HIV Infection.** These emergency rules, HSS 138, were published on March 28, 1998, and will expire on August 25, 1998, unless extended. They are amendments to the Department's current rules for administration of a program that subsidizes the cost of health insurance premiums for certain persons with human immunodeficiency virus (HIV) infection. The rule amendments implement changes to the program made by 1997 Wisconsin Act 27. The rule changes were published by emergency order so that the statutory program changes could be implemented quickly for the benefit of persons with HIV infection who were newly eligible for the subsidy. Replacement permanent rules were sent to the Legislative Council for review on March 3, 1998, taken to public hearings in mid-April 1998 and submitted to the Legislature on May 13, 1998 for review by standing committees. They were filed on July 1, 1998 and will take effect on September 1, 1998. Therefore, I request an extension of the effective period of the emergency rules by 7 days, through August 31, 1998. If that period is not extended, the Department in the interim will lack the authority to administer the program with the changes made or authorized by Act 27.

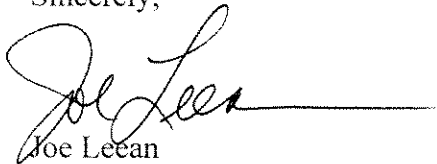
(2) **Exemption of Concession Stands at Locally Sponsored Sporting Events from Being Regulated as Restaurants.** These emergency rules, HFS 196.03 (22) (e) to (g), were published on March 14, 1998, and will expire on August 11, 1998, unless extended.

Senator Welch  
July 10, 1998  
Page 2

The current Budget Act, 1997 Wisconsin Act 27, created s. 254.61 (5) (g), Stats., which exempts "a concession stand at a locally sponsored sporting event, such as a little league game" from being regulated as a restaurant. The emergency order added this type of food service operation to a list of exempt operations in the rules which corresponds to the list in s. 254.61 (5) (g), Stats. In this connection, the Department defined "concession stand" and "locally sponsored sporting event." The rule changes were published by emergency order in order to provide for uniform statewide enforcement and in particular to ensure that no local inspector would exempt from regulation food stands at locally sponsored sporting events for adults. Replacement permanent rules were sent to the Legislative Council for review on March 12, 1998 and taken to public hearing on May 11, 1998. They will be submitted to the Legislature this month for review by standing committees but will not likely be filed until about September 10, 1998 for a November 1, 1998 effective date. Therefore, at this time I request an extension of the effective period of the emergency rules by 60 days, through October 9, 1998. If that period is not extended, the Department in the interim cannot guarantee uniform statewide enforcement of the new statute which could result in the cessation of routine inspections of some food stands at major sporting events.

Copies of the emergency rule orders are attached to this letter. If you have any questions about the rules relating to health insurance premium subsidies for certain persons with HIV infection, you may contact Richard Albertoni of the Department's Division of Health at 267-6875, and if you have any questions about the rules relating to concession stands at locally sponsored sporting events, you may contact Edward Rabotski of the Department's Division of Health at 266-8294.

Sincerely,



Joe Leca  
Secretary

Attachment

cc Representative Grothman

3-9-98

ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
REPEALING, RENUMBERING, AMENDING, REPEALING AND  
RECREATING AND CREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 252.16 and 252.17, Stats., direct the Department to operate a program that provides subsidies to cover the cost of health insurance premiums for persons with human immunodeficiency virus (HIV) infection who, because of a medical condition resulting from that infection, must take an unpaid leave from their jobs or are unable to continue working or must reduce their hours of work. The Department has been operating this program since November 1990 under ch. HSS 138 rules.

This order revises ch. HSS 138 to incorporate changes made in the program by the current Budget Act, 1997 Wisconsin Act 27. Act 27 amended s. 252.16, Stats., to change the program in the following ways for individuals who are unable to continue working or who must reduce their hours of work:

- The Department is directed to pay the premium costs for any health insurance coverage for an eligible individual, whether group coverage or an individual policy, and not only, as formerly, for continuation coverage under a group health plan if available to the individual.
- Program participation is expanded from individuals in families with incomes up to 200% of the federal poverty line to individuals in families with incomes up to 300% of the poverty line, but individuals in families with incomes between 201% and 300% of the federal poverty line are expected to contribute toward payment of the insurance premium.
- The Department is directed to pay an individual's premiums for as long as the individual remains eligible for the program and not only, as formerly, for a maximum of 29 months.

The rule changes add rule definitions for dependent, individual health policy, Medicare, subsidy under s. 252.16, Stats., and subsidy under s. 252.17, Stats., and modify rule definitions for employe and group health plan; raise the maximum family income for eligibility for the program to 300% of the federal poverty line; permit an individual to be eligible if covered or eligible for coverage under either a group health plan or an individual health policy; delete the provision that prohibits Medicare-eligible individuals from participating in the program since a Medicare supplement policy is now considered a type of individual health policy; require

eligible individuals whose family income exceeds 200% of the federal poverty line to contribute 3% of the annual policy premium toward payment of the premium; and delete the time limit of 29 months after which the Department's payments are to end.

All of the rule changes, except the changes to the definitions, apply only in the case of subsidies under s. 252.16, Stats., that is, for individuals who because of a medical condition related to HIV infection are unable to continue working or must reduce their hours of work.

The rule changes are being published by emergency order so that the program changes made by Act 27 can be implemented quickly for the benefit of persons with HIV infection who are newly eligible for the subsidy or for continuation of the subsidy. Act 27 was effective on October 14, 1997. Implementation of the statutory changes, which is expected to increase the caseload from 50 to about 300, depends upon rule changes. Following determination of what changes were needed in the rules, a statement of scope of proposed rules was published on November 15, 1997. After that the rulemaking order was drafted and decisions were made about language and the expected contribution of some eligible individuals toward payment of the annual premium. The proposed permanent rule changes were sent to the Legislative Council's Rules Clearinghouse for review on March 3, 1998, but because of the length of the permanent rulemaking process will not take effect until August 1, 1998 at the earliest. Earlier implementation of the statutory changes will allow some prospective program clients to maintain health insurance policies they otherwise could not afford. Not having the coverage could result in deterioration of their health.

### ORDER

Pursuant to authority vested in the Department of Health and Family Services by s. 252.16 (6), Stats., as affected by 1997 Wisconsin Act 27, and s. 252.17 (6), Stats., the Department of Health and Family Services hereby repeals, renumbers, amends, repeals and recreates and creates rules interpreting ss. 252.16 and 252.17, Stats., as affected by 1997 Wisconsin Act 27, as follows:

SECTION 1. HSS 138.01 is amended to read:

HSS 138.01 AUTHORITY AND PURPOSE. This chapter is promulgated pursuant to ss. 252.16(6) and 252.17(6), Stats., for the purpose of enabling the department to administer a program to subsidize health insurance premium costs ~~for coverage under a group health plan for~~ an individual who takes unpaid medical leave or for ~~continuation coverage available to an~~ individual who is unable to continue his or her employment or must reduce his or her hours because of an illness or medical condition arising from or related to HIV infection.

SECTION 2. HSS 138.03 is repealed and recreated to read:

HSS 138.03 DEFINITIONS. In this chapter:

(1) "COBRA" means the federal consolidated omnibus budget reconciliation act of 1986, PL 99-272.

(2) "Department" means the Wisconsin department of health and family services.

(3) "Dependent" means a spouse, an unmarried child under the age of 19 years, an unmarried child who is a full-time student under the age of 21 years and who is financially dependent upon the parent, or an unmarried child of any age who is medically certified as disabled and who is dependent upon the parent.

(4) "Employee" means any of the following:

(a) An active or retired wage, commissioned or salaried earner whose services are or were utilized by the employer who provided health care coverage to the individual by virtue of the individual's employment.

(b) A member of a union, trust or association where the member is entitled to health care coverage by virtue of the individual's membership in the union, trust or association.

(5) "Employer" means a group policyholder subject to s. 632.897, Stats., or the sponsor of a group health plan subject to 29 USC 1161 to 1168 or 42 USC 300bb-1 to 300bb-8, including a controlled group, partnership or other arrangement under common control, an affiliated service group and employe leasing arrangements.

(6) "Family income" means the gross earnings of an employe and his or her spouse, including wages and salary, net income from non-farm self-employment, net income from farm self-employment, as well as unearned income including social security, dividends, interest income, income from estates or trusts, net rental income or royalties, public assistance, pensions or annuities, unemployment compensation, workers compensation, maintenance or alimony, child support, family support and veterans pensions.

(7) "Family size" means the number of individuals in a group of persons related by birth, marriage or adoption who reside together.

(8) "Federal poverty line" means the poverty income threshold by size of family unit for the current calendar year published as part of the poverty income guidelines by the U.S. department of health and human services in the federal register, pursuant to 42 USC 9902(2).

(9) "Group health plan" means an insurance policy or a partially or wholly uninsured plan or program that provides hospital, medical or other health care coverage to members of a group whether or not dependents of the members are also covered. The term includes a medicare supplement policy, as defined in s. 600.03(28r), Stats., but does not include a medicare replacement policy, as defined in s. 600.03(28p), Stats., or a long-term care insurance policy, as defined in s. 600.03(28g).

(10) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(11) "HIV infection" means the pathological state produced by a human body in response to the presence of HIV.

(12) "Individual health policy" means an insurance policy or a partially or wholly uninsured plan or program that provides hospital, medical or other health coverage to an individual on an individual basis and not as a member of a group, whether or not dependents of the individual are also covered. The term includes a medicare supplement policy as defined in s. 600.03(28r), Stats., but does not include a medicare replacement policy, as defined in s. 600.03(28p), Stats., or a long-term care insurance policy, as defined in s. 600.03(28g), Stats.

(13) "Insurer" has the meaning prescribed in s.600.03(27), Stats.

(14) "Medicare" means coverage under part A or B of Title XVIII of the federal social security act, 42 USC 1395 to 1395zz.

(15) "Physician" has the meaning prescribed in s. 448.01(5), Stats., namely, an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the medical examining board, and holding a license granted by the medical examining board.

(16) "Residence" means the concurrence of physical presence with intent to remain in a place of fixed habitation, with physical presence being prima facie evidence of intent to remain.

(17) "Subsidy under s. 252.16, Stats." means a subsidy to pay all or part of the premium costs of health insurance coverage for a person with HIV infection who because of the HIV infection is unable to continue working or must reduce hours of work.

(18) "Subsidy under s. 252.17, Stats." means a subsidy to pay the premium owed for costs of health insurance coverage for a person with HIV infection who because of the HIV infection is on unpaid medical leave from his or her employment.

(19) "Unpaid medical leave" means an unpaid leave from employment for an employe who has a serious health condition, as defined in s. 103.10(1)(g), Stats., which makes the employe unable to perform his or her employment duties.

SECTION 3. HSS 138.04(1)(b) and (d) are repealed and recreated to read:

HSS 138.04(1) (b) 1. For a subsidy under s. 252.16, Stats., have a family income that does not exceed 300% of the federal poverty line for a family the size of the individual's family;

2. For a subsidy under s. 252.17, Stats., have a family income that does not exceed 200% of the federal poverty line for a family the size of the individual's family;



(d) Have health insurance coverage under a group health plan or an individual health policy, or is eligible for health insurance coverage under a group health plan or an individual health policy;

SECTION 4. HSS 138.04(1)(e) is amended to read:

HSS 138.04(1)(e) Is on unpaid medical leave if the person is seeking a subsidy for group health plan premiums while on unpaid medical leave ~~or is eligible for continuation coverage if the person is seeking a subsidy for continuation coverage premiums;~~ and

SECTION 5. HSS 138.04(1)(f) to (h) are repealed.

SECTION 6. HSS 138.04(1)(i) is renumbered 138.04(1)(f).

SECTION 7. HSS 138.04(2)(a) 4. and 5.a. and b. and (b), and (5) are amended to read:

HSS 138.04 (2) (a) 4. Name and address of the individual's present or immediate past employer through whom the individual has or had ~~group~~ health coverage and the name and address of the insurer or administrator of the ~~group~~ health plan under which the individual is or was covered;

5.a. Contact the individual's employer or former employer or ~~the administrator of the group health plan under which the individual is covered~~ health insurer to verify that the individual is on an unpaid medical leave or to verify the individual's eligibility for continuation coverage ~~the individual's employment status, the individual's eligibility for health insurance coverage~~ and the premium and any other conditions of coverage, to make premium payments and for other purposes related to the administration of this chapter; and

b. Make any necessary disclosure to the individual's employer or former employer or health insurer ~~or the administrator of the group health plan under which the individual is covered~~ regarding the individual's HIV status;

(b) Any individual who does not satisfy sub. (1) (b), (d) or (e), may submit an application form, DOH 4614, that the department will hold until the individual satisfies all the applicable requirements under sub. (1). The department may not contact the individual's employer ~~or the administrator of the group health plan under which the individual is covered, former employer or health insurer~~ until the individual satisfies all the applicable requirements under sub.(1) unless the individual authorizes the department, in writing, to make that contact and to make any necessary disclosure regarding the individual's HIV infection.

(5) RIGHT TO APPEAL. In the event that the department denies an application, the applicant may request a hearing under ch. 227, Stats. The request for a hearing shall be submitted, in writing, to the ~~department's office of administrative hearings~~ department of administration's division of hearings and appeals and received by that office no later than 20 calendar days after the date of the letter of denial under sub. (3)(b).

Note: The mailing address of the Division of Hearings and Appeals is P. O. Box 7875, Madison, WI 53707.

SECTION 8. HSS 138.05(1)(a) to (c) are amended to read:

HSS 138.05 PAYMENT OF HEALTH INSURANCE PREMIUMS. (1) AMOUNT AND PERIOD OF SUBSIDY. (a) Except as provided in pars. (e), (f) and (g) and (h), if an individual satisfies s. HSS 138.04(1) and has been notified by the department under s. HSS 138.04 (3)(a) that the application has been approved, the department shall ~~pay the full amount of each premium payment for coverage under a group health plan during an unpaid medical leave or for continuation coverage that is due from the individual~~ take one of the following actions, as appropriate, on or after the date of the notice of decision under s. HSS 138.04(3) (a):

1. For a subsidy under s. 252.17, Stats., the department shall pay the premium amount owed by the individual for coverage under a group health plan during an unpaid medical leave;

2. For a subsidy under s. 252.16, Stats., the department shall pay the full amount of the premium due for health insurance coverage for an individual whose family income does not exceed 200% of the federal poverty level; and

3. For a subsidy under s.252.16, Stats., the Department shall pay the full amount of the premium, subject to an annual premium contribution assessment under par. (d), due for health insurance coverage for an individual whose family income exceeds 200% but does not exceed 300% of the federal poverty line.

(b) The department may not refuse to pay ~~the full amount of each a premium payment because the group health plan coverage during an unpaid medical leave or continuation coverage that is available to the individual who satisfies s. HSS 138.04(1) includes coverage of the individual's dependents.~~

(c) Except as provided in par. (e), the department shall terminate payments when:

1. The individual's unpaid medical leave ~~or continuation coverage~~ ceases;

2. The individual no longer satisfies s. HSS 138.04(1); or

3. Upon the expiration ~~of 29 months after the unpaid medical leave or continuation coverage began, whichever occurs first~~ or termination of the individual's health insurance coverage.

SECTION 9. HSS 138.05(1)(d) is repealed and recreated to read:

HSS 138.05(1)(d) Upon approval of an application for a subsidy under s. 252.16, Stats., the department shall annually assess a premium contribution to be paid by eligible individuals whose family income exceeds 200% but does not exceed 300% of the federal poverty line. The amount of the contribution shall equal 3% of the annual policy premium. The annual policy

premium shall be determined by annualizing the first monthly premium that is due for the benefit year.

SECTION 10. HSS 138.05(1)(e) and (f) are amended to read:

HSS 138.05(1)(e) The obligation of the department to make payments under this section is subject to the availability of funds in the appropriation under s. 20.435 ~~(1)(ak)~~ (5)(am), Stats.

(f) ~~The~~ For COBRA continuation coverage policies, the amount paid under par. (a) may not exceed the applicable premium as defined in 29 USC 1164 or 42 USC 300bb-4, as amended to April 7, 1986.

SECTION 11. HSS 138.05 (1) (g) is renumbered 138.05 (1) (h).

SECTION 12. HSS 138.05 (1) (g) is created to read:

HSS 138.05 (1) (g) For non-COBRA policies, the amount paid under par. (a) may not exceed the amount of the premium of the most cost-effective policy available to the individual.

SECTION 13. HSS 138.05 (2) is amended to read:


HSS 138.05 (2) PAYMENT OF PREMIUMS. The department shall make payment of premiums allowed under sub. (1) to the insurer, the administrator of an employer self-funded plan or the employer that provides ~~the group health plan insurance coverage during an unpaid medical leave or the continuation coverage,~~ or to the covered individual when the individual, in order to meet a premium due date, makes a payment ~~after the department has approved his or her application,~~ directly to the insurer or employer if the individual and provides the department with proof that the payment was made.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health and Family Services

Dated: March 12, 1998

By:

  
\_\_\_\_\_  
Joseph L. Lee  
Secretary

SEAL:

LRB or Bill No./Adm. Rule No.  
**HSS 138**

Amendment No. if Applicable

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

**FISCAL ESTIMATE**  
DOA-2048 N(R10/96)

**Subject**  
**SUBSIDIZED HEALTH INSURANCE PREMIUMS FOR PERSONS WITH HIV INFECTION**

**Fiscal Effect**

State:  No State Fiscal Effect

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

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

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

Decrease Costs

Local:  No local government costs

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

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

5. Types of Local Governmental Units Affected:

- Towns
- Villages
- Cities
- Counties
- Others \_\_\_\_\_
- School Districts
- WTCS Districts

**Fund Sources Affected**

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

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

This order amends the Department's rules for operation of a health insurance subsidy program for persons with human immunodeficiency virus (HIV) infection who, because of a medical condition resulting from that infection, are unable to continue working, must reduce their hours of work or take unpaid leave from their jobs. Chapter HSS 138 is amended to incorporate changes made in the program by 1997 Wisconsin Act 27. The major changes made in the program by Act 27 are the following:

-The program is to pay the premium costs for any health insurance coverage for an eligible individual, and not only for coverage under a group health plan when the individual takes unpaid medical leave or available continuation coverage when the individual is unable to continue working or must reduce hours of work;

- Program participation is expanded for individuals unable to continue working or who must reduce their hours of work to include those with family incomes from 201% to 300% of the federal poverty line. These are expected to contribute toward payment of the insurance premium in accordance with a schedule that the Department includes in the rules; and

-The program is to pay the premiums until the individual is no longer eligible for the program, rather than, as formerly, for a maximum of 29 months.

The rule changes will not affect the expenditures or revenues of state government or local governments. All costs and savings to the State from the rule changes were taken into consideration by the Legislature when Act 27 was passed. Local governments are not involved in program administration.

**Long-Range Fiscal Implications**

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

H&FS/Richard Albertoni, 267-6875

Authorized Signature/Telephone No.

  
Richard W. Lorang, 266-9622

Date

3-2-78

2-12-98

ORDER OF THE  
DEPARTMENT OF HEALTH AND FAMILY SERVICES  
AMENDING AND CREATING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The current Budget Act, 1997 Wisconsin Act 27, effective October 14, 1997, created s. 254.61 (5) (g), Stats., to exempt a concession stand at a "locally sponsored sporting event" from being regulated under ch. HFS 196 as a restaurant. Following enactment of the State Budget, the Department received several inquiries from its own region-based inspectors and local health departments serving as the Department's agents for enforcement of the Department's environmental sanitation rules, including rules for restaurants, about the meaning of "locally sponsored sporting event." What did the term cover? Did it cover food stands at facilities of locally-owned sports franchises? Were these now to be exempt from regulation under the restaurant rules?

This rulemaking order adds the new exemption to the Department's rules for restaurants and, in this connection, defines both "locally sponsored sporting event" and "concession stand." The order makes clear that the exemption refers only to concession stands at sporting events for youth, that is, for persons under 18 years of age. That interpretation is supported by the statutory phrase, "such as a little league game," that follows the term, "locally sponsored sporting event," in s. 254.61 (5) (g), Stats. The order further narrows the applicability of the exemption by building into the definitions the Department's understanding of who organizes or sponsors an exempt sporting event and on whose behalf a concession stand at the event is operated.

Although the Department's understanding of what "locally sponsored sporting event" should be taken to mean has been communicated to its field-based inspectors and agent local health departments, this is no more than an interpretive guideline, lacking the force of law, until the Department has set out that understanding in its rules for restaurants. Because the process for making the permanent rule change will take several months, the Department is publishing the rule change now by emergency order in the interests of protecting the public's health. The emergency rule order will ensure that, pending promulgation of the permanent rule change, there will be uniform statewide enforcement of the statute change that will prevent any local inspector from exempting from regulation food stands at locally sponsored sporting events for adults.

ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 227.24 (1) and 254.74 (1), Stats., the Department of Health and Family Services hereby amends and creates rules interpreting s. 254.61 (5) (g), Stats., as created by 1997 Wisconsin Act 27, as follows:

SECTION 1. HFS 196.03 (22) (e) and (f) are amended to read:

HFS 196.03 (22) (e) Bed and breakfast establishments; or

(f) A private individual selling food from a moveable or temporary stand at a public farm sale; or

SECTION 2. HFS 196.03 (22) (g) is created to read:

HFS 196.03 (22) (g) A concession stand at a locally sponsored sporting event, such as a little league game. In this paragraph, "concession stand" means a food stand which serves meals and is operated exclusively for the benefit of a participating youth sports team or program or the governing youth sports organization, and "locally sponsored sporting event" means a competitive game, taking place inside or outside, specifically for youth under the age of 18, which is organized or sponsored by one or more local business, governmental or other civic organizations, or by parents of the youth, including a school-sponsored interscholastic sports competition.

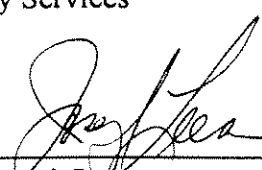
Note: Examples of locally sponsored sporting events are peewee, midget and little league baseball games, youth soccer games, minicycle races and time trials for youth, youth basketball games, youth football games, track and field competitions for youth, youth hockey tournaments and youth swimming meets.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health and  
Family Services

Date: March 2, 1998

By: \_\_\_\_\_

  
Joseph Lee  
Secretary

SEAL:

LRB or Bill No./Adm. Rule No.  
HFS 196.03(22)(e) to (g)  
Amendment No. if Applicable

**FISCAL ESTIMATE**  
DOA-2048 N(R10/96)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject EXEMPTION OF CONCESSION STANDS AT LOCALLY SPONSORED SPORTING EVENTS FROM BEING REGULATED AS RESTAURANTS**

**Fiscal Effect**

State:  No State Fiscal Effect

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

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

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

Local:  No local government costs

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

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

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

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

This order amends the Department's rules for restaurants to add concession stands at locally sponsored sporting events to a list of food service operations that are exempt under s. 254.61 (5), Stats., from being regulated as restaurants, and for this purpose to define "concession stand" and "locally sponsored sporting event." The addition of "a concession stand at a locally sponsored sporting event, such as a little league game," was made to the list of exempt food service operations in s. 254.61 (5), Stats., by 1997 Wisconsin Act 27.

At the beginning of February 1998 the Department and agent county, city and city-county local health departments together regulated 19,635 restaurants under ch. HFS 196. The new exemption applies to very few food service operations, and will mean for both the Department and agent local health departments a very modest reduction in workload and permit fee revenues. But those reductions are the consequence of the statute change. The rulemaking order itself will not affect the expenditures or revenues of state government or local governments.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)  
H&FS/ Edward Rabotski, 266-8294

Authorized Signature/Telephone No.  
*Richard W. Lorang*  
Richard W. Lorang, 266-9622

Date  
2-27-98

Tommy G. Thompson  
Governor

Linda Stewart  
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY  
201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-9427  
Fax: (608) 266-1784  
<http://www.dwd.state.wi.us/>

July 6, 1998

The Honorable Robert Welch  
State Senator  
Co-Chair, Joint Committee for  
Review of Administrative Rules  
1 East Main Street, Room 201  
Madison WI 53702

The Honorable Glenn Grothman  
State Representative  
Co-Chair, Joint Committee for  
Review of Administrative Rules  
125 West, State Capitol  
Madison WI 53702

JUL 07

Re: Emergency rule affecting DWD 12.25, Wis. Adm. Code  
Learnfare Amendments (Permanent Rule - CR 98-026)

Dear Senator Welch and Representative Grothman:

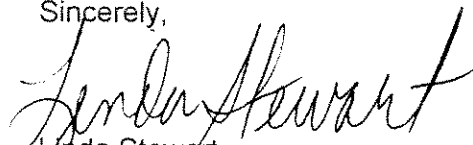
I am writing to request a second 60 day extension of this emergency rule, which became effective on January 2, 1998. Without an extension, the emergency rule will expire on August 1, 1998.

The purpose of this rule is to implement changes in the Learnfare program that were enacted in 1997 Act 27. A public hearing on the permanent rule was held on March 16, 1998 and written comments were accepted until March 20, 1998. There were no appearances at the public hearing. DWD received written comments on the rule from Legal Action of Wisconsin and the Wisconsin Council on Children and Families; the department has agreed with most of the comments and has made most of the changes requested. The rule was submitted for legislative review on May 7, 1998. On July 2, the Assembly Wisconsin Works Oversight Committee requested a meeting on further questions about changes made in the rule.

If the emergency rule is not extended, there could be questions about the validity of actions taken under the learnfare program until the permanent rule becomes effective. Most of the provisions of the permanent rule will be the same as the emergency rule.

Thank you for your consideration of this request. Please contact DWD Executive Assistant Connie Hagen at 266-7552 if you have any questions concerning this rule extension.

Sincerely,

  
Linda Stewart  
Secretary





# Emergency Rule

DWD 12.25 - Learnfare

Tommy G. Thompson  
Governor

Linda Stewart  
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY  
201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-9427  
Fax: (608) 266-1784  
<http://www.dwd.state.wi.us/>

April 30, 1998

The Honorable Robert Welch  
State Senator  
Co-Chair, Joint Committee for  
Review of Administrative Rules  
1 East Main Street, Room 201  
Madison WI 53702

The Honorable Glenn Grothman  
State Representative  
Co-Chair, Joint Committee for  
Review of Administrative Rules  
125 West, State Capitol  
Madison WI 53702

Re: Emergency rule affecting DWD 12.25, Wis. Adm. Code  
Learnfare Amendments (Permanent Rule - CR 98-026)

Dear Senator Welch and Representative Grothman:

I am writing to request a 60 day extension of this emergency rule, which became effective on January 2, 1998. Without an extension, the emergency rule will expire on June 2, 1998.

The purpose of this rule is to implement changes in the Learnfare program that were enacted in 1997 Act 27. A public hearing on the permanent rule was held on March 16, 1998 and written comments were accepted until March 20, 1998. We expect to submit the rule for legislative review by May 8, 1998.

If the emergency rule is not extended, there could be questions about the validity of actions taken under the learnfare program until the permanent rule becomes effective. Most of the provisions of the permanent rule will be the same as the emergency rule. There were no appearances at the public hearing. DWD received written comments on the rule from Legal Action of Wisconsin and the Wisconsin Council on Children and Families; the department has agreed with most of the comments and has made most of the changes requested.

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

Sincerely,

A handwritten signature in black ink that reads 'Linda Stewart'. The signature is written in a cursive, flowing style.

Linda Stewart  
Secretary





# RULES CERTIFICATE

STATE OF WISCONSIN                    )  
  ) SS  
DEPARTMENT OF                         )  
WORKFORCE DEVELOPMENT            )

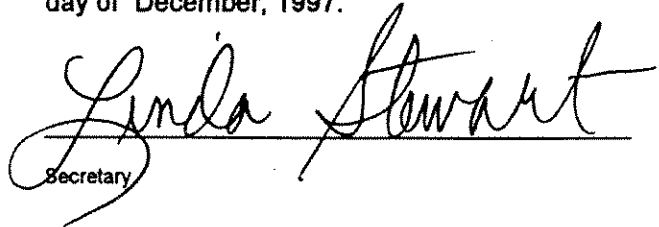
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

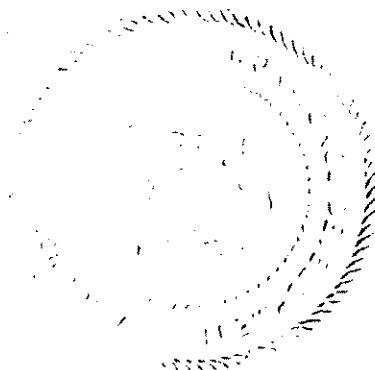
I, Linda Stewart, Secretary of the Department of Workforce Development, and custodian of the official records of said department, do hereby certify that the annexed rule relating to amendments to the Learnfare program was duly approved and adopted by this department on December 22, 1997.

(Date)

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 2:00 p.m. in the city of Madison, this 22nd day of December, 1997.

  
Secretary



LRB or Bill No./Adm. Rule No.  
DWD 11.195 and 12.25  
Amendment No. if Applicable

FISCAL ESTIMATE  
DOA-2048 N(R03/97)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

Subject  
Learnfare

**Fiscal Effect**

State:  No State Fiscal Effect

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

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

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

Decrease Costs

Local:  No local government costs

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

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

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

**Fund Sources Affected**

- GPR    FED    PRO    PRS    SEG    SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

This is the rule to implement the changes to the Learnfare program made in 1997 Wisconsin Act 27.

All costs to the Department and local governments for the operation of the Learnfare program were included in the 1997-1999 biennial budget act, 1997 Wisconsin Act 27. There are no additional costs for state government or local governments as a result of promulgation of these administrative rule changes.

Long-Range Fiscal Implications  
None.

Agency/Prepared by: (Name & Phone No.)  
DWD/DES Dianne Reynolds (6-0988)

Authorized Signature/Telephone No.

*Dianne Reynolds* 266-9427

Date

12/22/97

# ORDER OF ADOPTION

Pursuant to authority vested in the Department of Workforce Development by section(s)

49.26(1)(gm)2 and (h)1,

Stats., the Department of Workforce Development  creates;  amends;

repeals and recreates;  repeals and adopts rules of Wisconsin Administrative Code chapter(s):

DWD 12.25

(Number)

Learnfare Program Amendments

(Title)

The attached rules shall take effect on January 2, 1998,

pursuant to section 227.24, Stats.

Adopted at Madison, Wisconsin this

date: December 22, 1997.

DEPARTMENT OF WORKFORCE DEVELOPMENT

Linda Stewart  
Secretary



**FISCAL ESTIMATE WORKSHEET**

1997 Session

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

ORIGINAL  
 CORRECTED  
 UPDATED  
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
DWD 11.185 and 12.25

Amendment No.

Subject  
fare

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

*NONE*

II. Annualized Costs:	Annualized Fiscal Impact on State funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringes	\$ 0	\$ - 0
(FTE Position Changes)	( FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	\$ 0	\$ - 0
<b>B. State Costs by Source of Funds</b>		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</b>		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	\$ 0	\$ - 0

**NET ANNUALIZED FISCAL IMPACT**

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)  
DWD/DES Dianne Reynolds (6-0988)

Authorized Signature/Telephone No. *[Signature]* 266-9427 Date 12/22/97

# 1998 AMENDMENTS TO DWD 12.25

## (LEARNFARE)

The Wisconsin Department of Workforce Development proposes an order to repeal DWD 12.25(3)(i) and (m), (4)(b)1 and 2, and (c) to (e), (5)(c)2, (7)(a)9.c. to h., (9)(a)2.c., and (10)(e) and (f); to renumber DWD 12.25(3)(b) to (g), (j) to (L) and (n), and (10); to renumber and amend DWD 12.25(4)(b)(intro.), (f), and (g), (5)(c)1, (7)(a)9.i and (10)(title); to amend DWD 12.25(1), (2)(b), (3)(a), (b), (c), (e), (h), (i), (L), (m) and (p), (4)(a), (5)(a), (b), (d) and (f), (6)(a) and (b), (7)(title), (a)(intro.) and 1 to 8, 9.(intro.)a. and b., and (b), (9)(title), (a)2.(intro.), a. and b., (11)(a)(intro.), 1, 2 and 4, (b), (c)(title), (c), (d)(title), and (d); to repeal and recreate DWD 12.25(5)(e), (8), and (9)(a)1 and (b); and to create DWD 12.25(3)(b), (d), (j), (k) and (n), (4)(d), (5)(g), (7)(a)9.c. and (10), relating to amendments to the learnfare program.

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### Authority for Emergency Rule

The Department of Workforce Development promulgates this rule under the "emergency rule" procedure of sec. 227.24, Stats., as authorized by sec. 9126(5qh) of 1997 Wisconsin Act 27, which provides: "Using the procedure under section 227.24 of the statutes, the department of workforce development may promulgate rules required under section 49.26 of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 49.26 of the statutes, as affected by this act, but not to exceed the period authorized under section 227.24(1)(c) and (2) of the statutes. Notwithstanding section 227.24(1)(a) and (2)(b) of the statutes, the department of workforce development need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules under this subsection."

### Rule Analysis

Statutory authority for rule: sec. 49.26(1)(gm)2 and (h)1, Stats.  
Statute interpreted by the rule: sec. 49.26, Stats.

This rule implements changes to the learnfare program made by 1997 Wisconsin Act 27 by amending the existing rules on the learnfare program, sec. DWD 12.25, Wis. Adm. Code, as follows:

Application of the school attendance requirement is changed from children aged 6 to 19 to children aged 6 to 17.

A child will not meet the learnfare attendance requirement if the child is not enrolled in school or was not enrolled in the immediately preceding semester.



Participation in case management is required for a child who does not meet the attendance requirements or who is a minor parent, a dropout, a returning dropout, or a habitual truant. If a child fails to meet the attendance requirements, or if the child and the child's parent fail to attend or reschedule a case management appointment or activity after two written advance notices have been given by the W-2 agency, the W-2 agency is required to impose a financial penalty unless an exemption reason or a good cause reason is verified.

The exemption reasons are the same criteria that have in the past been treated as good cause under learnfare. In addition, good cause for failing to participate in learnfare case management includes any of the following:

- Child care is needed and not available.
- Transportation to and from child care is needed and not available on either a public or private basis.
- There is a court-ordered appearance or temporary incarceration.
- Observance of a religious holiday.
- Death of a relative.
- Family emergency.
- Illness, injury or incapacity of the child or a family member living with the child.
- Medical or dental appointment for the minor parent or the minor parent's child.
- Breakdown in transportation.
- A review or fair hearing decision identifies good cause circumstances.
- Other circumstances beyond the control of the child or the child's parent, as determined by the W-2 agency.

The financial penalty will be imposed as a reduction of the benefit amount paid to a W-2 participant who is in a community service job (CSJ) or transitional placement and will be imposed as a liability against a W-2 participant who is in a trial job. The amount of the penalty will be \$50 per month per child, not to exceed \$150 per W-2 group per month. The financial penalty will be imposed each month until the child meets the school attendance or case management requirements or until an exemption or good cause reason is verified.

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SECTION 1. DWD 12.25(1) is amended to read:

DWD 12.25(1) This section is adopted under the authority of ss. ~~49.26(1)(h)1 as and~~ ~~49.26(1)(gm)2 and (h)1~~ and 103.005(1), Stats., to provide rules for the administration of learnfare, a program that requires that all ~~preteens and teenagers~~ children ages 6 to 17 whose custodial parent is a participant in a W-2 employment position, who are parents or who are residing with a natural or adoptive parent and who have not graduated from high school or received a high school equivalency diploma ~~attend~~ meet the school attendance requirements and

that minor parents, dropouts, returning dropouts and habitual truants participate in case management to meet Wisconsin works participation requirements.

SECTION 2. DWD 12.25(2)(b) is amended to read:

DWD 12.25(2)(b) All ~~preteens and teenagers~~ children ages 6 to 17 included in a W-2 group who are parents or who are residing with a natural or adoptive parent and all W-2 groups which include a ~~teenager~~ child who is a parent or who is residing with a natural or adoptive parent.

SECTION 3. DWD 11.195(3)(a) and (b) are amended to read:

DWD 11.195(3)(a) "Ceased to attend" means that the ~~preteen or the teenager~~ child has 20 consecutive full school days of unexcused absences.

SECTION 4. DWD 12.25(3)(i) and (m) are repealed.

SECTION 5. DWD 12.25(3)(b) to (g), (j) to (L) and (n) are renumbered respectively DWD 12.25(3)(c), (e) to (i), (L), (m), (o) and (p).

SECTION 6. As renumbered, DWD 12.25(3)(c), (e), (h), (i), (L), (m) and (p) are amended to read:

DWD 11.195(3)(c) "Dropout" means a ~~preteen or a teenager~~ child who has ceased to attend school, has not graduated from high school or received a high school equivalency diploma and does not have an acceptable excuse under s. 118.15 (1) (b) to (d) or (3), Stats.

(e) "Excused absence" means that the reason for the absence meets the school district's definition of a valid reason for the ~~preteen or the teenager~~ child not to attend school.

(h) "Learnfare" means the program established under s. 49.26, Stats., which requires that all ~~preteens and all teenagers~~ children ages 6 to 17 ~~attend~~ meet the school attendance requirement and that minor parents, dropouts, returning dropouts and habitual truants participate in case management to meet Wisconsin works participation requirements.

(i) "Learnfare case management" means intervention for the purpose of assessing family needs, incorporating a plan to maintain school enrollment and further school attendance into the employability learnfare case management plan and assisting in the implementation of the plan for the purpose of maintaining school enrollment and furthering regular school attendance and career preparation by the preteen or the teenager child.

(L) "School" has the meaning prescribed in s. ~~49.50(7)(a)~~ 49.26(1)(a)2, Stats., namely, any one of the following:

- ~~1. A public school, as described in s. 115.01 (1), Stats.;~~
- ~~2. A private school, as defined in s. 115.001 (3r), Stats.;~~
- ~~3. A technical college pursuant to a contract under s. 118.15 (2), Stats.; or~~
- ~~4. A course of study meeting the standards established by the state superintendent of public instruction under s. 115.29 (4), Stats., for the granting of a declaration of equivalency of high school graduation.~~

(m) "School attendance officer" has the meaning prescribed in s. 118.16 (1) (b), Stats.; namely, ~~an employe designated by the school board to deal with matters relating to school attendance and truancy.~~

(p) "Unexcused absence" means that the reason for the absence does not meet the school district's definition of a valid reason for the preteen or the teenager child not to attend school.

SECTION 7. DWD 12.25(3)(b), (d), (j), (k), and (n) are created to read:

DWD 12.25(3)(b) "Child" means a person who is 6 to 17 years old.

(d) "Enrolled" means a child is officially registered to attend school.

(j) "Minor parent" means a child who is the parent of a dependent child.

(k) "Returning dropout" means a child who was a dropout and reenrolled in school in the same semester in which the child dropped out of school or the immediately succeeding semester.

(n) "School attendance requirement" means the child is enrolled in school or was enrolled in the immediately preceding semester.

SECTION 8. DWD 12.25(4)(a) is amended to read:

DWD 12.25(4)(a) A ~~preteen or a teenager~~ child shall ~~attend school full or part time~~ meet the school attendance requirement except that a ~~preteen or a teenager~~ child who has graduated from high school or received a high school equivalency diploma is exempt from the school attendance requirement under this section.

SECTION 9. DWD 12.25(4)(b)(intro.) is renumbered DWD 11.195(4)(b) and as renumbered is amended to read:

DWD 11.195(4)(b) A ~~preteen or a teenager~~ child who is required to participate in learnfare under this section shall be considered to have failed to have met the school attendance ~~requirements under the following circumstances:~~ requirement if the child is not enrolled in school or was not enrolled in the immediately preceding semester.

SECTION 10. DWD 12.25(4)(b)1 and 2 and (c) to (e) are repealed.

SECTION 11. DWD 12.25(4)(f) is renumbered DWD 12.25(4)(c) and as renumbered is amended to read:

DWD 12.25(4)(c) The ~~preteen, teenager~~ child or the W-2 participant shall cooperate in providing information needed to verify enrollment information or ~~good cause~~ exemption reasons under sub. (7). If none of these individuals ~~cooperate~~ cooperates, no eligibility for a W-2 employment position exists.

SECTION 12. DWD 12.25(4)(d) is created to read:

DWD 12.25(4)(d) Minor parents, dropouts, returning dropouts, and habitual truants shall participate in case management under sub.(8).

SECTION 13. DWD 12.25(4)(g) is renumbered DWD 12.25 (4)(e) and as renumbered is amended to read:

DWD 12.25(4)(e) The ~~preteen or the teenager~~ child who is a dropout or the W-2 participant shall notify the agency of the ~~preteen's or the teenager's~~ child's nonattendance at school in compliance with s. DWD 12.09(2)(m).

SECTION 14. DWD 12.25(5)(a) and (b) are amended to read:

DWD 12.25(5)(a) The W-2 agency shall review enrollment and attendance information at all initial eligibility determinations and at all reviews under s. DWD 12.16 (2) to (4).

(b) The W-2 agency shall inform the W-2 employment position participant that the signature of the participant on the W-2 application constitutes permission for the release of school enrollment and attendance information by the school district.

SECTION 15. DWD 12.25(5)(c)1 is renumbered DWD 12.25(5)(c) and as renumbered is amended to read:

DWD 12.25(5)(c) The W-2 agency shall request information from the school attendance officer in the ~~preteen's or the teenager's~~ child's school district about the ~~preteen's or teenager's~~ child's enrollment and attendance in the school district's current or most recently completed semester of attendance.

SECTION 16. DWD 12.25(5)(c)2 is repealed.

SECTION 17. DWD 12.25(5)(d) is amended to read:

DWD 11.195(5)(d) The W-2 agency shall use the enrollment and attendance information provided by a school to verify enrollment and attendance for a ~~preteen or a teenager~~ child.

SECTION 18. DWD 12.25(5)(e) is repealed and recreated to read:

DWD 12.25(5)(e) The W-2 agency shall review a child's claim that he or she is exempt under sub. (7) from the school attendance requirement, determine if a child is required to

participate in case management under sub. (8), and review a child's claim that he or she has a good cause reason under sub. (10) for not participating in case management.

SECTION 19. DWD 12.25(5)(f) is amended to read:

DWD 12.25(5)(f) The W-2 agency shall administer child care, including applying the appropriate child care co-payment under s. 49.155, Stats., and transportation funds ~~available to parents under age 20~~ under s. 49.26(1)(e), Stats. Payment for the cost of transportation to and from the child care provider shall be in the amount equal to the cost of transportation by the most appropriate means as determined by the department or the W-2 agency.

SECTION 20. DWD 12.25(5)(g) is created to read:

DWD 12.25(5)(g) If the child or W-2 participant does not have the power to produce verification of enrollment or good cause for not participating in case management, or requires assistance to do so, the W-2 agency shall proceed immediately to seek the verification.

**NOTE: See DWD 12.11, relating to verification.**

SECTION 21. DWD 12.25(6)(a) and (b) are amended to read:

DWD 12.25(6)(a) The school attendance officer shall provide information to the agency about the enrollment and attendance of a ~~preteen or a teenager~~ child who is enrolled in the public school in the school district within 5 working days after the date of receipt of the written request from the agency.

(b) The requirement under 20 USC 1232g and s. 118.125 (2), Stats., that written consent be given for a school district to make available the enrollment and attendance records of a pupil shall be met in the case of a ~~preteen or a teenager~~ child in a W-2 group by the signature of the parent, guardian, caretaker or pupil on the W-2 application for initial eligibility or eligibility redetermination.

SECTION 22. DWD 12.25(7)(title) is amended to read:

## DWD 12.25(title) EXEMPTION REASONS.

SECTION 23. DWD 12.25(7)(a)(intro.) and 1 to 8 are amended to read:

DWD 12.25(7)(a)(intro.) A ~~preteen or a teenager~~ child who is required to ~~attend school~~ meet the school attendance requirement to meet the learnfare participation requirements under s. 49.26, Stats., shall comply except when ~~there is good cause~~ exempt which shall be demonstrated by any of the following circumstances: in this paragraph.

1. The ~~preteen or a teenager~~ minor parent is the caretaker of a child who is less than 45 days old.
2. The ~~preteen or the teenager~~ minor parent is the caretaker of a child who is 45 to 89 days old and the ~~preteen or the teenager~~ minor parent has a physician's excuse, or child care for the ~~preteen's or the teenager's~~ minor parent's child is required but there is no on-site day care at the school and the school has no home instruction program.
3. The ~~preteen or the teenager~~ minor parent is the caretaker of a child who is 90 or more days old and the ~~preteen or the teenager~~ minor parent has a physician's excuse.
4. Child care services for the ~~preteen's or the teenager's~~ minor parent's child are necessary for the ~~preteen or the teenager~~ minor parent to attend school but child care licensed under s. 48.65, Stats., certified under s. 48.651, Stats., or established under s. 120.13 (14), Stats., is not available. Child care shall be considered unavailable if there is no space available for the child in day care licensed under s. 48.65, Stats., certified under s. 48.651, Stats., or established under s. 120.13 (14), Stats., within reasonable travel time and distance of the pupil's home.
5. Transportation to and from child care is necessary for the ~~preteen's or the teenager's~~ minor parent's child and there is no public or private transportation available.
6. The ~~preteen or the teenager~~ child is temporarily excused from school attendance by the school district under s. 118.15 (3), Stats.

7. The ~~preteen or the teenager~~ child is prohibited by the school district from attending school and an expulsion under s. 120.13 (1), Stats., is pending. This exemption no longer applies once the ~~preteen or the teenager~~ child has been formally expelled.

8. The ~~preteen or the teenager~~ child is unable to attend school because he or she was expelled under s. 120.13 (1), Stats., and another school is not available because for one of the following reasons:

a. There is no public or private school within reasonable travel time or distance which will accept the ~~preteen or the teenager~~ child.

b. There is no public or private transportation available to another school.

c. There is a public or private school which will accept the ~~preteen or the teenager~~ child but the tuition charge is prohibitive and the ~~preteen's or the teenager's~~ child's school district refuses to pay the tuition.

SECTION 24. DWD 12.25(7)(a)9(intro.), a. and b. are amended to read:

DWD 12.25(7)(a)9(intro.) The ~~preteen or the teenager~~ child failed to attend enroll in school for one or more of the following reasons in this subdivision:

a. Illness, injury or incapacity of the ~~preteen or the teenager~~ child or a member of the ~~preteen's or the teenager's~~ child's family. In this subparagraph, "member of the ~~preteen's or the teenager's~~ child's family" means a spouse, dependent child, or parent of the ~~preteen or teenager~~ child who lives with the ~~preteen or the teenager~~ child.

b. ~~Court required appearance or temporary~~ Temporary incarceration.

SECTION 25. DWD 12.25(7)(a)9.c. to h. are repealed.

SECTION 26. DWD 12.25(7)(a)9.c. is created to read:

DWD 12.25(7)(a)9.c. The child is on the waiting list for a children-at-risk program under s. 118.153, Stats., and a children-at-risk program that is appropriate for the child is not available.



SECTION 27. DWD 12.25(7)(a)9.i. is renumbered DWD 12.25(7)(a)9.d. and as renumbered is amended to read:

DWD 12.25(7)(a)9.d. Any other circumstance beyond the control of the ~~preteen or the teenager~~ child.

SECTION 28. DWD 12.25(7)(b) is amended to read:

DWD 12.25(7)(b) Additional ~~good-cause criteria~~ exemption reasons may be defined by the department through the review of agency decision process under s. DWD 12.22.

SECTION 29. DWD 12.25(8) is repealed and recreated to read:

DWD 12.25(8) CASE MANAGEMENT. (a) When a child fails to meet the school attendance requirements or when a child is determined to be a minor parent, dropout, returning dropout, or habitual truant, the W-2 agency shall require the child to participate in case management.

(b) Upon referral or identification of a child for whom case management is required, the W-2 agency shall schedule an initial appointment with the child and the child's parent to conduct an assessment and complete a learnfare case management plan. The W-2 agency shall schedule the appointment at a time when the appointment will not interfere with the child's school schedule or the parent's work schedule. The W-2 agency shall send written notice of the appointment to the child and the child's parent at least 7 working days before the appointment date. The notice shall clearly state that if the child and the child's parent are unable to attend, the child or the child's parent shall contact the W-2 agency before the scheduled appointment date to reschedule the appointment.

(c) If the child and the child's parent fail to attend or reschedule the initial appointment, the W-2 agency shall send a second and last written notice. This notice shall ask the child or the child's parent to contact the W-2 agency within 5 working days and shall state that if the child or

the child's parent does not contact the W-2 agency within 5 working days a financial penalty will be imposed in the next possible payment month.

(d) Case management requirements include the following:

1. The child and the child's parent shall participate in the assessment and the development of the learnfare case management plan and the parent shall sign the completed plan.

2. If the child is a dropout, the child or the child's parent shall provide verification of the child's return to school and attendance within 7 working days of the date that a school is available.

3. The child and the child's parent shall attend meetings scheduled by the W-2 agency. The W-2 agency shall schedule the meetings times when the meetings will not interfere with the parent's work schedule. The W-2 agency shall send written notice of a meeting to the child and the child's parent at least 7 working days before the scheduled meeting date. The notice shall clearly state that if the child and the child's parent are unable to attend, the child or the child's parent shall contact the W-2 agency before the scheduled meeting date to reschedule the meeting. If the child and the child's parent fail to attend or reschedule the meeting, the W-2 agency shall send a second and last written notice. This notice shall ask the child or the child's parent to contact the W-2 agency within 5 working days and shall state that if the child or the child's parent does not contact the W-2 agency within 5 working days a financial penalty will be imposed in the next possible payment month.

4. If the W-2 agency determines that the child needs special services, the W-2 agency shall make the special services available at a time that does not interfere with the parent's work schedule. If the parent's participation is required, the parent shall participate along with the child in the special services activities.

5. The child or the child's parent, or both, shall engage in activities identified by the W-2 agency in the learnfare case management plan as necessary to maintain school enrollment or improve school attendance.

SECTION 30. DWD 12.25(9)(title) is amended to read:

DWD 12.25(9)(title) CRITERIA FOR APPLYING A FINANCIAL PENALTY.

SECTION 31. DWD 12.25(9)(a)1 is repealed and recreated to read:

DWD 12.25(9)(a)1. Except as provided under subd. 2., a child who fails to meet the school attendance requirement under sub. (4) without an exemption reason under sub. (7), or who fails to participate in case management under sub. (8) without good cause under sub. (10), may be ~~sanctioned~~ have a financial penalty imposed under sub. (11).

SECTION 32. DWD 12.25(9)(a)2(intro.), a. and b. are amended to read:

DWD 12.25(9)(a)2(intro.) No ~~sanction~~ financial penalty may be imposed and any existing ~~sanction~~ financial penalty shall be removed in the next possible payment month in which a ~~sanction~~ financial penalty is not already being applied for the ~~preteen~~ child under any of the ~~following~~ circumstances: in this subdivision.

a. The agency has not made a ~~case manager~~ case management available to a ~~preteen~~ child who has failed to meet the school attendance requirements requirement under sub. (4) or who is required to participate in case management under sub. (8).

b. The ~~preteen~~ child or ~~preteen's family~~ his or her parent is unable to comply with the learnfare case management plan because a service identified is not available and no appropriate alternative service as determined by the ~~learnfare case manager~~ W-2 agency is available.

SECTION 33. DWD 12.25(9)(a)2.c. is repealed.

SECTION 34. DWD 12.25(9)(b) is repealed and recreated to read:

DWD 11.195(9)(b) A child who fails to meet the school attendance requirement under sub. (4) without an exemption reason under sub. (7), or who fails to participate in case management under sub. (8) without good cause under sub. (10), may have a financial penalty imposed under sub. (11) as long as he or she continues to do so or until an exemption reason under sub. (7) or a good cause reason under sub. (10) is verified.

SECTION 35. DWD 12.25(10)(e) and (f) are repealed.

SECTION 36. DWD 12.25(10)(title) is renumbered DWD 12.25(11)(title) and as renumbered is amended to read:

DWD 11.195(11) APPLYING FINANCIAL PENALTIES.

SECTION 37. DWD 12.25(10) is renumbered DWD 12.25(11) and as renumbered DWD 12.25(11)(a)(intro.), 1., 2., and 4., (b), (c)(title), (c), (d)(title), and (d) are amended to read:

DWD 12.25(11)(a)(intro.) Upon determining that a ~~sanction or~~ financial penalty is proper under sub. (9), the W-2 agency shall send written notice to the W-2 participant which specifies all of the following:

1. That the CSJ or transitional benefit will be reduced or that a financial penalty will be imposed on a trial job participant, in the amount of \$50 per month per child not to exceed \$150 per W-2 group per month, in the next possible payment month because the ~~preteen~~ child required to attend school has failed to meet the school attendance requirements and requirement or has failed to participate in learnfare case management ~~or the teenager required to attend school has failed to meet attendance requirements.~~

2. The beginning date of the ~~sanction or~~ financial penalty, and the ~~preteen or the teenager~~ child to whom the ~~sanction or~~ financial penalty applies.

4. The ~~preteen's, teenager's~~ child's or W-2 participant's right to request a review under par. (b).

(b) The ~~preteen, teenager~~ child or W-2 participant may request a review of an agency decision in accordance with s. 49.26, Stats., and s. DWD 12.22 on the W-2 agency's determination that a ~~sanction or~~ financial penalty is proper under sub. (9).

(c)(title) *Failure to meet the school attendance requirement or to participate in learnfare case management.* If the ~~preteen, teenager~~ child or W-2 participant does not request a review under par. (b) or if, after a review has been held, the W-2 agency affirms that a ~~sanction or~~ financial penalty is proper under sub. (9), the agency shall impose a ~~sanction or~~ financial penalty and reduce the CSJ or transitional placement benefit beginning in the next possible payment month or impose a financial penalty on the trial job participant, in the amount of \$50 per month per child not to exceed \$150 per W-2 group per month.

(d)(title) *Effective period of financial penalty.* A ~~sanction or~~ financial penalty applied under par. (c) shall be effective imposed each payment month until the ~~preteen~~ child meets the monthly school attendance requirement and or participates in case management or ~~the teenager~~ meets the ~~monthly attendance requirement~~ an exemption reason under sub. (4) or a good cause reason under sub. ~~(7)~~(10) is verified.

SECTION 38. DWD 12.25(10) is created to read:

DWD 12.25(10) GOOD CAUSE FOR NOT PARTICIPATING IN CASE MANAGEMENT. (a) The W-2 agency shall determine if a child or the child's parent had good cause for failing to participate in learnfare case management. In making such a determination, the W-2 agency may require the child or the child's parent to provide written documentation that good cause existed. If the child or the child's parent does not have the power to produce documentation of good cause, or requires assistance to do so, the W-2 agency shall proceed immediately to seek the documentation.

(b) Good cause for failing to participate in learnfare case management shall be any of the circumstances listed in this paragraph.

1. Child care is needed for the child to participate in case management, but child care is not available.
2. Transportation is needed to and from child care for the minor parent's child, but neither public nor private transportation is available.
3. Court-required appearance or temporary incarceration. Any court appearance for a victim of domestic abuse is considered to be required.
4. Observance of a religious holiday.
5. Death of a relative.
6. Family emergency.
7. Illness, injury, or incapacity of the child or a family member (meaning a spouse, child or parent) living with the child.
8. Medical or dental appointment for the minor parent or the minor parent's child.
9. Breakdown in transportation.
10. A review decision or a fair hearing decision identifies circumstances that justify good cause.
11. Other circumstances beyond the control of the child or the child's parent, but only as determined by the W-2 agency.

SECTION 39. EFFECTIVE DATE. This emergency rule shall take effect upon publication in accordance with sec. 227.24, Stats.

(End)

SECTION 27. DWD 12.25(7)(a)9.i. is renumbered DWD 12.25(7)(a)9.d. and as renumbered is amended to read:

DWD 12.25(7)(a)9.d. Any other circumstance beyond the control of the ~~preteen or the teenager~~ child.

SECTION 28. DWD 12.25(7)(b) is amended to read:

DWD 12.25(7)(b) Additional ~~good cause criteria~~ exemption reasons may be defined by the department through the review of agency decision process under s. DWD 12.22.

SECTION 29. DWD 12.25(8) is repealed and recreated to read:

DWD 12.25(8) CASE MANAGEMENT. (a) When a child fails to meet the school attendance requirements or when a child is determined to be a minor parent, dropout, returning dropout, or habitual truant, the W-2 agency shall require the child to participate in case management.

(b) Upon referral or identification of a child for whom case management is required, the W-2 agency shall schedule an initial appointment with the child and the child's parent to conduct an assessment and complete a learnfare case management plan. The W-2 agency shall schedule the appointment at a time when the appointment will not interfere with the child's school schedule or the parent's work schedule. The W-2 agency shall send written notice of the appointment to the child and the child's parent at least 7 working days before the appointment date. The notice shall clearly state that if the child and the child's parent are unable to attend, the child or the child's parent shall contact the W-2 agency before the scheduled appointment date to reschedule the appointment.

(c) If the child and the child's parent fail to attend or reschedule the initial appointment, the W-2 agency shall send a second and last written notice. This notice shall ask the child or the child's parent to contact the W-2 agency within 5 working days and shall state that if the child or

the child's parent does not contact the W-2 agency within 5 working days a financial penalty will be imposed in the next possible payment month.

(d) Case management requirements include the following:

1. The child and the child's parent shall participate in the assessment and the development of the learnfare case management plan and the parent shall sign the completed plan.

2. If the child is a dropout, the child or the child's parent shall provide verification of the child's return to school and attendance within 7 working days of the date that a school is available.

3. The child and the child's parent shall attend meetings scheduled by the W-2 agency. The W-2 agency shall schedule the meetings times when the meetings will not interfere with the parent's work schedule. The W-2 agency shall send written notice of a meeting to the child and the child's parent at least 7 working days before the scheduled meeting date. The notice shall clearly state that if the child and the child's parent are unable to attend, the child or the child's parent shall contact the W-2 agency before the scheduled meeting date to reschedule the meeting. If the child and the child's parent fail to attend or reschedule the meeting, the W-2 agency shall send a second and last written notice. This notice shall ask the child or the child's parent to contact the W-2 agency within 5 working days and shall state that if the child or the child's parent does not contact the W-2 agency within 5 working days a financial penalty will be imposed in the next possible payment month.

4. If the W-2 agency determines that the child needs special services, the W-2 agency shall make the special services available at a time that does not interfere with the parent's work schedule. If the parent's participation is required, the parent shall participate along with the child in the special services activities.



5. The child or the child's parent, or both, shall engage in activities identified by the W-2 agency in the learnfare case management plan as necessary to maintain school enrollment or improve school attendance.

SECTION 30. DWD 12.25(9)(title) is amended to read:

DWD 12.25(9)(title) CRITERIA FOR APPLYING A FINANCIAL PENALTY.

SECTION 31. DWD 12.25(9)(a)1 is repealed and recreated to read:

DWD 12.25(9)(a)1. Except as provided under subd. 2., a child who fails to meet the school attendance requirement under sub. (4) without an exemption reason under sub. (7), or who fails to participate in case management under sub. (8) without good cause under sub. (10), may be ~~sanctioned~~ have a financial penalty imposed under sub. (11).

SECTION 32. DWD 12.25(9)(a)2(intro.), a. and b. are amended to read:

DWD 12.25(9)(a)2(intro.) No ~~sanction~~ financial penalty may be imposed and any existing ~~sanction~~ financial penalty shall be removed in the next possible payment month in which a ~~sanction~~ financial penalty is not already being applied for the ~~preteen~~ child under any of the following circumstances: in this subdivision.

a. The agency has not made ~~a case manager~~ case management available to a ~~preteen~~ child who has failed to meet the ~~school~~ attendance requirements requirement under sub. (4) or who is required to participate in case management under sub. (8).

b. The ~~preteen~~ child or ~~preteen's family~~ his or her parent is unable to comply with the learnfare case management plan because a service identified is not available and no appropriate alternative service as determined by the ~~learnfare case manager~~ W-2 agency is available.

SECTION 33. DWD 12.25(9)(a)2.c. is repealed.

SECTION 34. DWD 12.25(9)(b) is repealed and recreated to read:

DWD 11.195(9)(b) A child who fails to meet the school attendance requirement under sub. (4) without an exemption reason under sub. (7), or who fails to participate in case management under sub. (8) without good cause under sub. (10), may have a financial penalty imposed under sub. (11) as long as he or she continues to do so or until an exemption reason under sub. (7) or a good cause reason under sub. (10) is verified.

SECTION 35. DWD 12.25(10)(e) and (f) are repealed.

SECTION 36. DWD 12.25(10)(title) is renumbered DWD 12.25(11)(title) and as renumbered is amended to read:

DWD 11.195(11) APPLYING FINANCIAL PENALTIES.

SECTION 37. DWD 12.25(10) is renumbered DWD 12.25(11) and as renumbered DWD 12.25(11)(a)(intro.), 1., 2., and 4., (b), (c)(title), (c), (d)(title), and (d) are amended to read:

DWD 12.25(11)(a)(intro.) Upon determining that a ~~sanction or~~ financial penalty is proper under sub. (9), the W-2 agency shall send written notice to the W-2 participant which specifies all of the following:

1. That the CSJ or transitional benefit will be reduced or that a financial penalty will be imposed on a trial job participant, in the amount of \$50 per month per child not to exceed \$150 per W-2 group per month, in the next possible payment month because the ~~preteen~~ child ~~required to attend school~~ has failed to meet the school attendance requirements and requirement or has failed to participate in learnfare case management ~~or the teenager required to attend school has failed to meet attendance requirements.~~

2. The beginning date of the ~~sanction or~~ financial penalty, and the ~~preteen or the teenager~~ child to whom the ~~sanction or~~ financial penalty applies.

4. The ~~preteen's, teenager's~~ child's or W-2 participant's right to request a review under par. (b).

b) The ~~preteen, teenager~~ child or W-2 participant may request a review of an agency in accordance with s. 49.26, Stats., and s. DWD 12.22 on the W-2 agency's determination that a ~~sanction or~~ financial penalty is proper under sub. (9).

(c)(title) *Failure to meet the school attendance requirement or to participate in case management.* If the ~~preteen, teenager~~ child or W-2 participant does not request a review under par. (b) or if, after a review has been held, the W-2 agency affirms that a ~~sanction or~~ financial penalty is proper under sub. (9), the agency shall impose a ~~sanction or~~ financial penalty to reduce the CSJ or transitional placement benefit beginning in the next possible payment or impose a financial penalty on the trial job participant, in the amount of \$50 per month which shall not to exceed \$150 per W-2 group per month.

(d)(title) *Effective period of financial penalty.* A ~~sanction or~~ financial penalty applied under par. (c) shall be effective imposed each payment month until the ~~preteen~~ child meets the monthly school attendance requirement and or participates in case management or ~~the teenager~~ the monthly attendance requirement an exemption reason under sub. (4) or a good cause exemption under sub. ~~(7)~~(10) is verified.

SECTION 38. DWD 12.25(10) is created to read:

**DWD 12.25(10) GOOD CAUSE FOR NOT PARTICIPATING IN CASE**

**MANAGEMENT.** (a) The W-2 agency shall determine if a child or the child's parent had good cause for failing to participate in learnfare case management. In making such a determination, the W-2 agency may require the child or the child's parent to provide written documentation that good cause existed. If the child or the child's parent does not have the power to produce the documentation of good cause, or requires assistance to do so, the W-2 agency shall proceed immediately to seek the documentation.

(b) Good cause for failing to participate in learnfare case management shall be any of the circumstances listed in this paragraph.

1. Child care is needed for the child to participate in case management, but child care is not available.

2. Transportation is needed to and from child care for the minor parent's child, but neither public nor private transportation is available.

3. Court-required appearance or temporary incarceration. Any court appearance for a victim of domestic abuse is considered to be required.

4. Observance of a religious holiday.

5. Death of a relative.

6. Family emergency.

7. Illness, injury, or incapacity of the child or a family member (meaning a spouse, child or parent) living with the child.

8. Medical or dental appointment for the minor parent or the minor parent's child.

9. Breakdown in transportation.

10. A review decision or a fair hearing decision identifies circumstances that justify good cause.

11. Other circumstances beyond the control of the child or the child's parent, but only as determined by the W-2 agency.

SECTION 39. EFFECTIVE DATE. This emergency rule shall take effect upon publication in accordance with sec. 227.24, Stats.

(End)



July 21, 1998

✓ Senator Robert Welch  
Co-Chairman  
Joint Committee for Review of Administrative Rules  
Room 201  
1 East Main  
Madison, WI 53707

Representative Glenn Grothman  
Co-Chairman  
Joint Committee for Review of Administrative Rules  
Room 125 West, State Capitol  
Madison, WI 53707

Dear Senator Welch and Representative Grothman:

As you may know, this Department adopted an emergency rule earlier this year relating to fire-protective penetrations in commercial buildings and multifamily dwellings. The emergency rule took effect on January 28, has been extended once by the Joint Committee for Review of Administrative Rules, and will expire on August 26, 1998, unless a second extension is granted by the Committee.

Since adoption of the emergency rule and pursuant to chapter 227, Stats., the Department has adopted a permanent rule (Clearinghouse Rule Number 98-017) for replacing the emergency rule, and filed the permanent rule with the Revisor of Statutes and the Secretary of State. Based on information from the Revisor's office, the time factors associated with printing and publishing will cause the permanent rule to not come into effect prior to September 1, 1998.

The Joint Committee for Review of Administrative Rules requests that agencies make a formal request for an extension prior to the expiration of an emergency rule.

In light of these facts, we respectfully request a 60-day extension of the emergency rule under s. 227.24 (2), Stats., in order to preserve the public safety and provide a smooth and orderly transition from the emergency rule to the permanent rule.

Robert Welch and Glenn Grothman

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July 21, 1998

If you have any questions regarding our progress to date or this request, please don't hesitate to contact us. Thank you in advance for your consideration of our request.

A copy of the emergency rule is enclosed.

Sincerely,



*for* William J. McCoshen,  
Secretary

Enc.

*File ref: JCRAR extension request2*

Department of Commerce

Emergency Rule Relating to Commercial Buildings and Multifamily Dwellings

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule included in this order is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under sections 101.02 (15), 101.12, and 101.971 to 101.978, Wisconsin Statutes, the Department protects public health, safety, and welfare by promulgating construction requirements for commercial and public buildings including multifamily dwellings. Present requirements include methods for stopping fire in one area of a building from spreading to another area through service openings in walls, floors, and ceilings, such as penetrations for plumbing and electrical components. The methods that were specified have been shown to fail under fire testing conditions.

The proposed rule impacts all public buildings, which includes multifamily dwellings, and replaces the failed firestopping methods with techniques, materials, and methods that have been tested and nationally recognized. The rule essentially mandates use of tested and listed fire-stop systems for nearly all penetrations of every wall, floor, and ceiling that is required to provide area-separation protection consisting of either a fire-protective membrane or fire-resistive rated construction. The rule also clarifies some problematic, technical provisions that have resulted in confusion and unnecessary costs. Without the proposed rule revisions, firestopping methods that have been proven to be ineffective would still be allowed to be utilized, thereby putting public safety and health at risk.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Dated at Madison, Wisconsin, this  
15 day of Jan, A.D. 1998,  
By the Department of Commerce

  
William J. McCoshen, Secretary

SECTION 1. COMM 51.01 (2r) is created to read:

COMM 51.01 (2r) "Annular space" means the opening around a penetrating item.

SECTION 2. COMM 51.01 (41c) is created to read:

COMM 51.01 (41c) "F-rating" means the time period in hours that a through-penetration fire-stop system will limit the spread of flame through the penetrated assembly, including the penetrating elements, when tested in accordance with ASTM E814.

SECTION 3. COMM 51.01 (52m) is created to read:

COMM 51.01 (52m) "Fire-stop system, approved" means a fire-stop product or device that is tested and listed by an approved testing laboratory under ASTM E814 regarding the ability, the F-rating, to retard the passage of flame for a specific time period.

Note: See sub. (41c) for the definition of F-rating.

SECTION 4. COMM 51.01 (81m) is created to read:

COMM 51.01 (81m) "Membrane penetration" means an opening made through one side of an assembly that is a building element as listed in Table 51.03.

Note: An example of a membrane penetration is a recessed outlet box penetrating the gypsum wallboard (the gypsum wallboard is the "membrane") on one side of stud wall construction.

SECTION 5. COMM 51.01 (130d) is created to read:

COMM 51.01 (130d) "Through penetration" means an opening that passes through an entire assembly that is a building element as listed in Table 51.03.

SECTION 6. COMM 51.03 (1) (a) 1. is repealed.

SECTION 7. COMM 51.047 (1) (a) 1. is amended to read:

COMM 51.047 FIRE-RATED DOOR ASSEMBLIES IN FIRE-RATED CONSTRUCTION. (1) FIRE-RESISTIVE RATED DOOR ASSEMBLIES. (a) 1. Except as provided in subs. 2. and 3., an opening where permitted in a fire-resistive rated wall or wall assembly shall be protected by means of a fire-resistive rated door assembly which conforms to ASTM E-152, except as provided in subd. 2.



SECTION 8. COMM 51.047 (1) (a) 3 is created to read:

COMM 51.047 (1) (a) 3. Where the fire-resistive assembly is being used to provide only the protection required as a structural building element as specified in line 17 of Table 51.03-A, and is not also used for separation purposes, the opening need not be protected in accordance with subd. 1. provided the opening is effectively fire stopped such that the fire-resistive integrity of the structural element will not be reduced.

SECTION 9. COMM 51.048 (1) is renumbered COMM 51.048 (1) (a) and amended to read:

COMM 51.048 FIRE WINDOW AND GLASS BLOCK ASSEMBLIES IN FIRE-RATED CONSTRUCTION. (1) WINDOW OPENINGS. (a) ~~Window~~ Except as provided in par. (b), window openings, where permitted in fire-rated walls, shall be protected with fire window or glass block assemblies rated as ¾-hour by an approved laboratory when tested in accordance with ASTM E-162.

SECTION 10. COMM 51.048 (1) (b) is created to read:

COMM 51.048 (1) (b) Where the fire-resistive assembly is being used to provide only the protection required as a structural building element as specified in lines 17 of Table 51.03-A, and is not also used for separation purposes, the opening need not be protected in accordance with par. (a) provided the opening is effectively fire stopped such that the fire-resistive integrity of the structural element will not be reduced.

SECTION 11. COMM 51.049 is repealed and recreated to read:

COMM 51.049 MISCELLANEOUS PENETRATIONS IN FIRE-RESISTIVE CONSTRUCTION. (1) GENERAL. (a) Except as specified in pars. (c) and (d), penetrations into or through fire-resistive assemblies, fire protective membranes, thermal barriers, or construction providing a finish rating as an alternative to a fire resistive assembly shall be protected in accordance with this section.

(b) Where an approved fire-stop system is used, the system shall be tested and listed for the specific application regarding the size of the opening, the size and type of the penetrating objects, the type of assembly penetrated, and the size of the annular space to be fire stopped.

(c) Where tested and listed fire resistive assemblies under s. COMM 51.044 are being used and the listing provisions regarding membrane penetrations are in conflict with this section, the provisions of the tested and listed assembly shall govern.

(d) Where the fire-resistive assembly is being used to provide only the protection required as a structural building element as specified in lines 1 through 17, 21 and 22 of Table 51.03-A, is not also used for separation purposes and is a through penetration, the opening need not be protected in accordance with par. (a) provided the opening is effectively fire stopped such that the fire-resistive integrity of the structural element will not be reduced.

(2) DUCT OPENINGS. The annular space around the outside of a duct that penetrates into or through fire-resistive construction as described in sub. (1) (a) shall be protected in accordance with one of the following:

(a) The recommendations of the manufacturer of the fire damper or the fire curtain door, when the duct is provided with a fire damper or fire curtain door at the penetration.

(b) An approved fire-stop system having an F-rating not less than the hourly rating of the assembly being penetrated.

(c) Grout, concrete or mortar for the full depth of the penetrated assembly when the assembly is constructed of concrete or masonry.

Note: See s. ILHR 64.42 for fire damper and fire curtain door requirements.

(3) NONCOMBUSTIBLE PENETRATING ITEMS. (a) Except as specified in par. (b), through-penetrations of fire-resistive assemblies by noncombustible wiring items or noncombustible piping items, excluding glass piping, shall be in accordance with this paragraph.

Note: See sub. (4) for glass piping.

1. 'Openings of 100 square inches or less.' Where the area of an opening is 100 square inches or less and the total aggregate area of all such openings does not exceed 100 square inches in any 100 square feet of surface area being penetrated, the annular space around the penetrating item shall be protected in accordance with one of the following:

a. Closed with an approved fire-stop system having an F-rating not less than the hourly rating of the assembly being penetrated.

b. Filled to the full depth of the penetrated assembly with grout, concrete, or mortar, when the assembly is constructed of concrete or masonry.

2. 'Openings larger than 100 square inches.' a. Wall assemblies. Where a wall assembly opening is larger than 100 square inches or the total aggregate area of all such openings exceeds 100 square inches in any 100 square feet of wall surface area, the annular space around the penetrating item shall be closed with an approved fire-stop system having an F-rating not less than the hourly rating of the assembly being penetrated.

b. Floor assemblies. Where a floor assembly opening is larger than 100 square inches or the total aggregate area of all such openings exceeds 100 square inches in any 100 square feet of surface area and the openings are not contained within a wall or column at the point the floor is penetrated, the annular space around the penetrating item shall be closed with an approved fire-stop system having an F-rating not less than the hourly rating of the assembly being penetrated.

Note: See s. COMM 51.02 (24) for openings contained within a wall or column.

(4) COMBUSTIBLE PENETRATING ITEMS. (a) Except as specified in (b), through-penetrations of fire-resistive assemblies by combustible piping items, glass piping, or combustible wiring items shall be protected with an approved fire-stop system having an F-rating not less than the hourly rating of the assembly being penetrated.

(5) MEMBRANE PENETRATIONS. (a) Openings around objects. 1. Except as provided in subds. 2. to 4., the annular space of a membrane penetration into a fire-resistive assembly, or through a fire-protective membrane, a thermal barrier, or construction providing a finish rating as an alternative to a fire resistive assembly, shall be protected in the same manner as that provided for the membrane of a through-penetration of a similar assembly under sub. (2), (3), or (4).

2. The annular space of a membrane penetration that occurs around electrical outlet and switch boxes that are listed by an approved testing laboratory as either "outlet boxes and fittings classified for fire resistance" or "metallic outlet boxes" and the installations are 1/8 inch or less are not required to be protected in accordance with subd. 1.

3. The annular space of a membrane penetration that occurs around a fire sprinkler and which is provided with a metal escutcheon plate is not required to be protected in accordance with subd. 1.

4. Membrane penetrations by electrical outlet and switch boxes that are listed by an approved testing laboratory as "outlet boxes and fittings classified for fire resistance" shall be used subject to the requirements and limitations of the listing.

(b) Metallic outlet boxes. The membrane penetration of vertical fire-resistive construction having a rating of 2 hours or less, including a fire-resistive wall assembly, a fire-protective membrane, a thermal barrier, or construction providing a finish rating as an alternative to a fire resistive assembly, that is created by electrical outlet and switch boxes that are listed by an approved testing laboratory as "metallic outlet boxes", shall be subject to all of the following:

1. The surface area of an individual box may not exceed 16 square inches.

2. The aggregate surface area of the boxes may not exceed 100 square inches per 100 square feet of wall surface.

3. Boxes shall not be installed on opposite sides of walls or partitions of staggered stud construction unless tested and listed for use in staggered stud construction by an approved testing laboratory.

4. Where boxes are located on opposite sides of a non-staggered stud wall or partition, the boxes shall be separated by a minimum horizontal distance of 24 inches, unless installed in accordance with all of the following:

a. The boxes shall be protected by a wall opening protective material that is listed for the use by an approved testing laboratory.

b. The wall opening protective material shall be installed in accordance with the requirements and limitation of the listing.

SECTION 12. Table 51.25-10 line 64 is created to read:

Table 51.25-10  
(partial table)

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ASTM	American Society for Testing and Materials 1916 Race Street Philadelphia, Pennsylvania 19103
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64. E814-94b	Standard Test Method for Fire Tests of Through-Penetration Fire stops.
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SECTION 13. ILHR 57.01 (2) (a) 3. is created to read:

ILHR 57.01 (2) (a) 3. a. The annular space around ducts, pipes, and conduits or other penetrating items that penetrate fire-protective membranes required under this paragraph shall be protected as specified in s. COMM 51.049.

b. For the purpose of protecting the annular spaces under subpar. a., the methods of protection shall be the same as the membranes for at least a one-hour rated assembly.

SECTION 14. ILHR 66.32 (4) (b) 1. a. is amended to read:

ILHR 66.32 (4) (b) 1. a. An attached garage which is 600 square feet or less in area, or which is divided into areas of 600 square feet or less by ~~walls~~ construction having at least one-hour fire-resistive rating, shall be separated from the rest of the multifamily dwelling by the construction specified in sub. (2). Any opening in a wall separating the garage from the rest of the multifamily dwelling shall be protected by means of a self-closing door assembly providing a minimum fire-resistive rating of 3/4 hours, except as provided in subpar. b.

SECTION 15. ILHR 66.32 (5) is repealed and recreated read:

ILHR 66.32 (5) PENETRATIONS. (a) Fire-resistive assemblies. Openings that occur around ducts, pipes, and conduits or other penetrating items that penetrate required fire-resistive assemblies shall be protected in accordance with s. COMM 51.049.

(b) Fire-protective membranes. The annular space around ducts, pipes, and conduits or other penetrating items that penetrate fire-protective membranes required under subs. (2) (a), (3) (a), and (4) (b) 1. a. and s. ILHR 66.33 (2) (a) and (b) 1. shall be protected in the same manner as required for 1-hour fire-resistive rated assemblies in s. COMM 51.049.

Note: The reference to 1-hour fire-resistive rating does not require that the fire-protective membranes as described in s. ILHR 66.32 (2) provide a 1-hour rating as a listed assembly.

(c) Ceiling ducts. 1. Except as provided in subd. 2. a duct larger than 20 square inches that penetrates a ceiling fire protective membrane required under subs. (2) (a), (3) (a), and (4) (b) 1. a. and s. ILHR 66.33 (2) (a) and (b) 1. shall be protected in the same manner as required for 1-hour rated assemblies in accordance with one of the following:

a. A fire damper as specified in s. ILHR 64.42.

b. A listed duct outlet protection system.

c. At least six feet of continuous steel ductwork from the membrane penetration toward the air handling unit.

2. A duct is not required to be protected in accordance with sub. 1 provided the floor-ceiling assembly has been tested and listed without protecting the duct penetration and maintains the fire resistance rating of the assembly.

Note: The reference to 1-hour fire-resistive rating does not require that the fire-protective membranes as described in s. ILHR 66.32 (2) provide a 1-hour rating as a listed assembly.

SECTION 16. ILHR 66.33 (2) (a) and (b) 1. are amended to read:

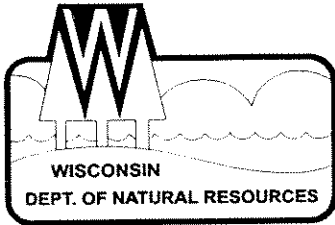
ILHR 66.33 (2) (a) Buildings exceeding the thresholds in sub. (1). Buildings protected by an automatic fire sprinkler system or 2-hour fire resistance in accordance with sub. (1) are not limited in area or height, up to the 60-foot maximum in s. ILHR 66.03 (6), except that buildings of Type 7 or 8 construction may have no more than 4 occupied floor levels of wood frame construction; any additional floor levels shall be of Type 5 or better construction, and the total number of stories may not exceed 4. For Type 8 buildings, the structural ~~parts and the enclosing walls and ceilings~~ building elements as listed in Table 51.03-A, and the dwelling unit separations listed in s. 66.32 (2), but not those elements specified in sub. (1) (a) 1., shall be protected with at least the 5/8-inch type X wallboard or equivalent as specified in s. ILHR 66.32 (2).

Note: There are other requirements that impact or affect the fire resistive ratings or properties of exterior walls and elements, such as the setback limitations for property lines under s. COMM 51.03

(b) Buildings at or below the thresholds in sub. (1). 1. Buildings without the sprinkler protection or 2-hour fire resistance required by sub. (1) shall comply with Table 66.33-B, except that Type 8 buildings may be built to the Type 7 limits in that table if the structural ~~parts and the enclosing walls and ceilings~~, as building elements listed in Table 51.03-A for Type 8, but not those elements specified in sub. (1) (a) 1., are protected with at least the 5/8-inch type X wallboard or equivalent as specified in s. ILHR 66.32 (2).

Note: There are other requirements that impact or affect the fire resistive ratings or properties of exterior walls and elements, such as the setback limitations for properties lines under s. COMM 51.03

(End)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

June 30, 1998

Honorable Robert Welch, Co-Chair  
Joint Committee for Review of  
Administrative Rules  
Room 201E  
State Capitol

*IM 240*

Honorable Glenn Grothman, Co-Chair  
Joint Committee for Review of  
Administrative Rules  
125 West  
State Capitol

SUBJECT: Emergency Rule Extension for AM-29-97(E)

*Robert Glenn*  
Gentlemen:

The Department of Natural Resources, under s. 227.24(2), Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. AM-29-97(E) for 60 days. This emergency order pertaining to emission limitations for motor vehicles took effect on January 1, 1998 and was extended until July 29, 1998.

The extension of the emergency rule is needed so that the enforcement of these emission limitations can continue in the current less restrictive limitations. The rule was modified because recent technical information indicates that many older vehicles cannot reasonably maintain a level of emissions which would comply with the final cutpoints in the current permanent rule. The new permanent rule was adopted by the Natural Resources Board at its June meeting.

A copy of the emergency order is attached. If you have any questions, please contact Tom Steidl, Bureau of Legal Services at 266-0235.

Sincerely,

*George*

George E. Meyer  
Secretary

attach.

cc: Tom Steidl - LS/5  
Carol Turner - LS/5  
Chris Bovee - AM/7

Quality Natural Resources Management  
Through Excellent Customer Service



ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
RENUMBERING, REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to renumber NR 485.04, Table 3, (1)(a) to (c), (2)(a) to (c) and (3)(a) to (c); to repeal and recreate NR 485.04, Table 1, (3); and to create NR 485.04, Table 3, (1)(a), (2)(a) and (3)(a) relating to emission limitations for motor vehicles.

AM-29-97E

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 227.11(2)(a), 227.24, 285.11(1) and 285.30(2), Stats.

Statutes interpreted: ss. 285.11(6) and 285.30(2), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

The final phase of the motor vehicle emission limitations in Table 1 of s. NR 485.04, Wis. Adm. Code, is scheduled to go into effect on December 1, 1997. These limitations are used in the state's motor vehicle emission inspection and maintenance (I/M) program, which is operating in seven southeastern Wisconsin counties (Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha). Two phases of less restrictive limitations have been in effect prior to December 1, 1997: the first phase in effect from December 1, 1995, to November 30, 1996, and the second phase in effect from December 1, 1996, to November 30, 1997.

The proposed emergency rule will relax the current rule's final phase of motor vehicle emission limitations for 1990 and older model year vehicles as follows: For 1987 to 1990 model year vehicles, the proposed emission limitations will be more restrictive than the current rule's second phase limitations (those in effect from December 1, 1996, to November 30, 1997), but not as restrictive as the current rule's final phase limitations; for the older vehicles subject to the I/M program (model year 1968 to 1986), the current rule's second phase limitations will remain in effect.

Also, the proposed rule will add to Table 3 of s. NR 485.04, Wis. Adm. Code, a new set of fast-pass emission limitations for each of the three measured air contaminants as follows: Fast-pass hydrocarbon limitations which apply to motor vehicles having composite hydrocarbon limitations in Table 1 of s. NR 485.04, Wis. Adm. Code, of at least 0.60 grams/mile but less than 0.80 grams/miles; fast-pass carbon monoxide limitations which apply to motor vehicles having composite carbon monoxide limitations in Table 1 of s. NR 485.04, Wis. Adm. Code, of at least 10.0 grams/mile but less than 15.0 grams/mile; and fast-pass oxides of nitrogen limitations which apply to motor vehicles having composite oxides of nitrogen limitations in Table 1 of s. NR 485.04, Wis. Adm. Code, of at least 1.5 grams/mile but less than 2.0 grams/mile.

SECTION 1. NR 485.04, Table 1, (3) is repealed and recreated to read:

NR 485.04, Table 1, (3) MOTOR VEHICLES INSPECTED BETWEEN DECEMBER 1, 1997, AND NOVEMBER 30, 1998.

(a) *Light-Duty Vehicles.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer	0.60	0.40	10.0	8.0	1.5
1994-1995					
Tier 1 <sup>1</sup>	0.60	0.40	10.0	8.0	1.5
Not Tier 1 <sup>1</sup>	0.80	0.50	15.0	12.0	2.0
1991-1993	0.80	0.50	15.0	12.0	2.0
1987-1990	1.10	0.70	20.0	16.0	2.5
1983-1986	2.00	1.25	30.0	24.0	3.0
1981-1982	2.00	1.25	60.0	48.0	3.0
1980	2.00	1.25	60.0	48.0	6.0
1977-1979	7.50	5.00	90.0	72.0	6.0
1975-1976	7.50	5.00	90.0	72.0	9.0
1973-1974	10.0	6.00	150	120	9.0
1968-1972	10.0	6.00	150	120	10.0

(b) *Light-Duty Trucks with GVWR of 6,000 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1996 and newer					
(≤3750 lbs LVW) <sup>2</sup>	0.60	0.40	10.0	8.0	1.5
(>3750 lbs LVW) <sup>2</sup>	0.80	0.50	13.0	10.0	1.8
1994-1995					
Tier 1 <sup>3</sup>					
(≤3750 lbs LVW) <sup>4</sup>	0.60	0.40	10.0	8.0	1.5
(>3750 lbs LVW) <sup>4</sup>	0.80	0.50	13.0	10.0	1.8
Not Tier 1 <sup>3</sup>	1.60	1.00	40.0	32.0	2.5
1991-1993	1.60	1.00	40.0	32.0	2.5
1988-1990	2.20	1.40	55.0	44.0	3.0
1987	2.20	1.40	55.0	44.0	5.5
1984-1986	3.20	2.00	80.0	64.0	7.0
1979-1983	7.50	5.00	100	80.0	7.0
1975-1978	8.00	5.00	120	96.0	9.0
1973-1974	10.0	6.00	150	120	9.0
1968-1972	10.0	6.00	150	120	10.0



(c) *Light-Duty Trucks with GVWR of 6,001 to 8,500 pounds and Heavy-Duty Vehicles with GVWR of 8,500 pounds or less.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1997 and newer					
(≤5750 lbs ALVW) <sup>5</sup>	0.80	0.50	13.0	10.0	1.8
(>5750 lbs ALVW) <sup>5</sup>	0.80	0.50	15.0	12.0	2.0
1996					
Tier 1 <sup>6</sup>					
(≤5750 lbs ALVW) <sup>7</sup>	0.80	0.50	13.0	10.0	1.8
(>5750 lbs ALVW) <sup>7</sup>	0.80	0.50	15.0	12.0	2.0
Not Tier 1 <sup>6</sup>	1.60	1.00	40.0	32.0	3.5
1991-1995	1.60	1.00	40.0	32.0	3.5
1988-1990	2.20	1.40	55.0	44.0	4.0
1987	2.20	1.40	55.0	44.0	5.5
1984-1986	3.20	2.00	80.0	64.0	7.0
1979-1983	7.50	5.00	100	80.0	7.0
1975-1978	8.00	5.00	120	96.0	9.0
1973-1974	10.0	6.00	150	120	9.0
1968-1972	10.0	6.00	150	120	10.0

(d) *Heavy-Duty Vehicles with GVWR of 8,501 to 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1998 and newer	2.00	1.25	30.0	24.0	4.0
1991-1997	2.00	1.25	40.0	32.0	5.0
1987-1990	2.40	1.50	55.0	44.0	7.0
1985-1986	5.00	3.10	80.0	64.0	8.0
1979-1984	7.50	5.00	100	80.0	8.0
1974-1978	10.0	6.00	150	120	10.0
1970-1973	10.0	6.00	175	140	10.0
1968-1969	20.0	12.5	200	160	15.0

(e) *Heavy-Duty Vehicles with GVWR greater than 10,000 pounds.*

Model Years	Hydrocarbons (grams/mile)		Carbon Monoxide (grams/mile)		Oxides of Nitrogen (grams/mile)
	Composite	Phase 2	Composite	Phase 2	Composite
1998 and newer	3.50	2.00	60.0	48.0	7.0
1991-1997	3.50	2.00	70.0	56.0	9.0
1987-1990	4.50	2.80	100	80.0	13.0
1985-1986	10.0	6.00	160	128	16.0
1979-1984	11.5	7.00	180	145	16.0
1974-1978	13.0	8.00	200	160	20.0
1970-1973	13.0	8.00	225	180	20.0
1968-1969	24.0	15.0	250	200	30.0

<sup>1</sup> Upon written department approval granted to DOT, the emission limitations for "Not Tier 1" may be applied to all 1994-1995 model year light-duty vehicles.

<sup>2</sup> Upon written department approval granted to DOT, the emission limitations for ">3750 lbs LVW" may be applied to all 1996 model year and newer light-duty trucks with GVWR of 6,000 pounds or less.

<sup>3</sup> Upon written department approval granted to DOT, the emission limitations for "Not Tier 1" may be applied to all 1994-1995 model year light-duty trucks with GVWR of 6,000 pounds or less.

<sup>4</sup> Upon written department approval granted to DOT, the emission limitations for ">3750 lbs LVW" may be applied to all 1994-1995 model year light-duty trucks with GVWR of 6,000 pounds or less which are certified to meet Tier 1 emission standards.

<sup>5</sup> Upon written department approval granted to DOT, the emission limitations for ">5750 lbs ALVW" may be applied to all 1997 model year and newer light-duty trucks with GVWR of 6,001 to 8,500 pounds and to all 1997 model year and newer heavy-duty vehicles with GVWR of 8,500 pounds or less.

<sup>6</sup> Upon written department approval granted to DOT, the emission limitations for "Not Tier 1" may be applied to all 1996 model year light-duty trucks with GVWR of 6,001 to 8,500 pounds and to all 1996 model year heavy-duty vehicles with GVWR of 8,500 pounds or less.

<sup>7</sup> Upon written department approval granted to DOT, the emission limitations for ">5750 lbs ALVW" may be applied to all 1996 model year light-duty trucks with GVWR of 6,001 to 8,500 pounds which are certified to meet Tier 1 emission standards and to all 1996 model year heavy-duty vehicles with GVWR of 8,500 pounds or less which are certified to meet Tier 1 emission standards.

SECTION 2. NR 485.04, Table 3, (1)(a) to (c), (2)(a) to (c) and (3)(a) to (c) are renumbered (1)(b) to (d), (2)(b) to (d) and (3)(b) to (d), respectively.

SECTION 3. NR 485.04, Table 3, (1)(a), (2)(a) and (3)(a) are created to read:

NR 485.04, Table 3, (1)(a) Motor vehicles having composite hydrocarbon emission limitations in Table 1 of at least 0.60 grams/mile but less than 0.80 grams/mile.

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	0.031	N/A	83	0.082	N/A
31	0.032	N/A	84	0.083	N/A
32	0.032	N/A	85	0.084	N/A
33	0.034	N/A	86	0.085	N/A
34	0.035	N/A	87	0.086	N/A
35	0.037	N/A	88	0.087	N/A
36	0.038	N/A	89	0.088	N/A
37	0.038	N/A	90	0.089	N/A
38	0.039	N/A	91	0.090	N/A
39	0.040	N/A	92	0.090	N/A
40	0.041	N/A	93	0.091	N/A
41	0.042	N/A	94	0.092	0.000
42	0.043	N/A	95	0.093	0.000
43	0.043	N/A	96	0.093	0.000
44	0.044	N/A	97	0.094	0.000
45	0.049	N/A	98	0.097	0.000
46	0.050	N/A	99	0.099	0.000
47	0.052	N/A	100	0.101	0.000
48	0.055	N/A	101	0.103	0.000
49	0.058	N/A	102	0.103	0.000
50	0.059	N/A	103	0.103	0.000
51	0.060	N/A	104	0.103	0.000
52	0.060	N/A	105	0.105	0.000
53	0.061	N/A	106	0.107	0.000
54	0.062	N/A	107	0.108	0.000
55	0.062	N/A	108	0.114	0.000
56	0.063	N/A	109	0.115	0.004
57	0.065	N/A	110	0.116	0.004
58	0.068	N/A	111	0.116	0.005
59	0.069	N/A	112	0.117	0.006
60	0.070	N/A	113	0.117	0.006
61	0.070	N/A	114	0.118	0.006
62	0.071	N/A	115	0.122	0.007
63	0.071	N/A	116	0.128	0.007
64	0.071	N/A	117	0.135	0.008
65	0.071	N/A	118	0.140	0.009
66	0.072	N/A	119	0.144	0.009
67	0.072	N/A	120	0.145	0.009
68	0.073	N/A	121	0.147	0.010
69	0.074	N/A	122	0.149	0.010
70	0.074	N/A	123	0.151	0.010
71	0.075	N/A	124	0.153	0.011
72	0.075	N/A	125	0.154	0.011
73	0.076	N/A	126	0.156	0.011
74	0.076	N/A	127	0.157	0.011
75	0.077	N/A	128	0.158	0.012
76	0.077	N/A	129	0.159	0.012
77	0.077	N/A	130	0.160	0.012
78	0.077	N/A	131	0.161	0.013
79	0.079	N/A	132	0.161	0.013
80	0.080	N/A	133	0.161	0.014
81	0.081	N/A	134	0.162	0.014
82	0.082	N/A	135	0.163	0.014

Second	Composite (grams)	Phase 2 (grams)
136	0.165	0.014
137	0.166	0.014
138	0.167	0.014
139	0.167	0.015
140	0.168	0.015
141	0.168	0.015
142	0.169	0.015
143	0.170	0.016
144	0.170	0.016
145	0.171	0.016
146	0.172	0.017
147	0.172	0.017
148	0.173	0.017
149	0.173	0.017
150	0.174	0.018
151	0.174	0.018
152	0.175	0.018
153	0.175	0.018
154	0.176	0.018
155	0.176	0.019
156	0.177	0.019
157	0.177	0.020
158	0.178	0.021
159	0.178	0.021
160	0.179	0.022
161	0.188	0.024
162	0.196	0.027
163	0.201	0.029
164	0.210	0.031
165	0.213	0.032
166	0.219	0.040
167	0.226	0.047
168	0.228	0.047
169	0.229	0.050
170	0.229	0.055
171	0.230	0.059
172	0.233	0.062
173	0.237	0.064
174	0.246	0.067
175	0.255	0.071
176	0.257	0.074
177	0.259	0.078
178	0.263	0.080
179	0.269	0.081
180	0.271	0.084
181	0.275	0.086
182	0.280	0.088
183	0.283	0.090
184	0.288	0.097
185	0.290	0.100
186	0.292	0.100
187	0.294	0.101
188	0.295	0.101

Second	Composite (grams)	Phase 2 (grams)
189	0.297	0.105
190	0.301	0.107
191	0.305	0.111
192	0.308	0.114
193	0.313	0.118
194	0.314	0.122
195	0.315	0.125
196	0.316	0.128
197	0.320	0.128
198	0.323	0.129
199	0.325	0.129
200	0.328	0.130
201	0.331	0.132
202	0.333	0.135
203	0.335	0.137
204	0.339	0.138
205	0.344	0.140
206	0.348	0.141
207	0.352	0.142
208	0.356	0.143
209	0.358	0.144
210	0.361	0.145
211	0.363	0.149
212	0.366	0.151
213	0.367	0.154
214	0.368	0.156
215	0.369	0.157
216	0.370	0.160
217	0.370	0.161
218	0.371	0.161
219	0.372	0.161
220	0.373	0.163
221	0.373	0.164
222	0.376	0.166
223	0.381	0.168
224	0.387	0.169
225	0.387	0.171
226	0.391	0.174
227	0.394	0.175
228	0.395	0.176
229	0.396	0.177
230	0.397	0.177
231	0.398	0.177
232	0.399	0.178
233	0.400	0.178
234	0.401	0.178
235	0.403	0.178
236	0.403	0.178
237	0.403	0.178
238	0.404	0.178
239	0.404	0.179

(2)(a) Motor vehicles having composite carbon monoxide emission limitations in Table 1 of at least 10.0 grams/mile but less than 15.0 grams/mile.

Second	Composite (grams)	Phase 2 (grams)	Second	Composite (grams)	Phase 2 (grams)
30	0.173	N/A	83	0.557	N/A
31	0.193	N/A	84	0.559	N/A
32	0.209	N/A	85	0.561	N/A
33	0.213	N/A	86	0.566	N/A
34	0.213	N/A	87	0.568	N/A
35	0.214	N/A	88	0.571	N/A
36	0.225	N/A	89	0.575	N/A
37	0.240	N/A	90	0.577	N/A
38	0.259	N/A	91	0.582	N/A
39	0.268	N/A	92	0.583	N/A
40	0.269	N/A	93	0.583	N/A
41	0.271	N/A	94	0.586	0.000
42	0.276	N/A	95	0.587	0.000
43	0.278	N/A	96	0.589	0.000
44	0.279	N/A	97	0.599	0.000
45	0.289	N/A	98	0.613	0.000
46	0.336	N/A	99	0.627	0.000
47	0.371	N/A	100	0.648	0.000
48	0.383	N/A	101	0.665	0.000
49	0.386	N/A	102	0.687	0.000
50	0.388	N/A	103	0.728	0.000
51	0.393	N/A	104	0.791	0.000
52	0.399	N/A	105	0.793	0.000
53	0.408	N/A	106	0.799	0.000
54	0.421	N/A	107	0.822	0.000
55	0.422	N/A	108	0.855	0.000
56	0.423	N/A	109	0.897	0.042
57	0.425	N/A	110	0.899	0.043
58	0.431	N/A	111	0.910	0.059
59	0.463	N/A	112	0.935	0.067
60	0.468	N/A	113	0.967	0.070
61	0.468	N/A	114	0.969	0.073
62	0.468	N/A	115	0.984	0.079
63	0.475	N/A	116	1.004	0.083
64	0.479	N/A	117	1.015	0.086
65	0.486	N/A	118	1.016	0.088
66	0.500	N/A	119	1.020	0.089
67	0.515	N/A	120	1.035	0.092
68	0.516	N/A	121	1.046	0.097
69	0.519	N/A	122	1.050	0.102
70	0.526	N/A	123	1.051	0.116
71	0.529	N/A	124	1.053	0.120
72	0.531	N/A	125	1.058	0.127
73	0.533	N/A	126	1.075	0.130
74	0.535	N/A	127	1.086	0.131
75	0.538	N/A	128	1.090	0.131
76	0.543	N/A	129	1.092	0.132
77	0.547	N/A	130	1.092	0.133
78	0.550	N/A	131	1.093	0.133
79	0.553	N/A	132	1.109	0.134
80	0.553	N/A	133	1.131	0.138
81	0.555	N/A	134	1.131	0.139
82	0.556	N/A	135	1.131	0.148

Second	Composite (grams)	Phase 2 (grams)
136	1.133	0.154
137	1.134	0.160
138	1.136	0.163
139	1.138	0.166
140	1.139	0.171
141	1.139	0.174
142	1.139	0.177
143	1.139	0.180
144	1.139	0.185
145	1.139	0.186
146	1.139	0.186
147	1.139	0.186
148	1.139	0.187
149	1.139	0.188
150	1.139	0.191
151	1.139	0.197
152	1.139	0.198
153	1.141	0.199
154	1.153	0.200
155	1.209	0.201
156	1.426	0.211
157	1.460	0.248
158	1.543	0.260
159	1.668	0.339
160	1.856	0.364
161	2.095	0.387
162	2.412	0.456
163	2.730	0.687
164	3.032	0.768
165	3.183	0.908
166	3.208	1.126
167	3.223	1.238
168	3.233	1.314
169	3.426	1.433
170	3.535	1.513
171	3.741	1.583
172	3.926	1.623
173	4.063	1.699
174	4.227	1.801
175	4.414	2.038
176	4.505	2.058
177	4.587	2.146
178	4.668	2.200
179	4.743	2.212
180	4.807	2.228
181	5.031	2.281
182	5.101	2.383
183	5.189	2.564
184	5.421	2.716
185	5.489	2.749
186	5.663	2.802
187	5.747	2.879
188	5.884	2.974

Second	Composite (grams)	Phase 2 (grams)
189	5.969	3.005
190	6.005	3.043
191	6.116	3.129
192	6.171	3.150
193	6.233	3.156
194	6.297	3.163
195	6.367	3.194
196	6.407	3.227
197	6.437	3.247
198	6.463	3.265
199	6.494	3.291
200	6.535	3.311
201	6.556	3.353
202	6.585	3.416
203	6.637	3.443
204	6.705	3.486
205	6.763	3.523
206	6.848	3.556
207	6.875	3.607
208	6.908	3.625
209	6.951	3.694
210	6.988	3.727
211	7.051	3.729
212	7.136	3.754
213	7.249	3.805
214	7.250	3.868
215	7.251	3.889
216	7.270	3.913
217	7.320	3.992
218	7.371	4.007
219	7.434	4.094
220	7.451	4.122
221	7.455	4.131
222	7.462	4.145
223	7.466	4.171
224	7.468	4.189
225	7.502	4.193
226	7.532	4.201
227	7.532	4.216
228	7.532	4.240
229	7.552	4.240
230	7.579	4.241
231	7.581	4.247
232	7.581	4.268
233	7.592	4.274
234	7.603	4.296
235	7.604	4.297
236	7.607	4.297
237	7.608	4.297
238	7.613	4.310
239	7.622	4.343

(3)(a) Motor vehicles having composite oxides of nitrogen emission limitations in Table 1 of at least 1.5 gram/mile but less than 2.0 gram/mile.

Second	Composite (grams)
30	0.084
31	0.088
32	0.094
33	0.108
34	0.116
35	0.120
36	0.122
37	0.122
38	0.124
39	0.124
40	0.126
41	0.130
42	0.138
43	0.156
44	0.164
45	0.172
46	0.180
47	0.186
48	0.192
49	0.192
50	0.200
51	0.206
52	0.218
53	0.232
54	0.236
55	0.240
56	0.246
57	0.250
58	0.254
59	0.254
60	0.256
61	0.258
62	0.260
63	0.262
64	0.264
65	0.266
66	0.268
67	0.270
68	0.276
69	0.282
70	0.288
71	0.294
72	0.300
73	0.302
74	0.302
75	0.306
76	0.312
77	0.324
78	0.326
79	0.330
80	0.336
81	0.348
82	0.354

Second	Composite (grams)
83	0.358
84	0.362
85	0.368
86	0.374
87	0.374
88	0.374
89	0.374
90	0.374
91	0.374
92	0.374
93	0.374
94	0.374
95	0.374
96	0.374
97	0.374
98	0.374
99	0.376
100	0.382
101	0.394
102	0.412
103	0.434
104	0.452
105	0.462
106	0.478
107	0.492
108	0.496
109	0.498
110	0.498
111	0.506
112	0.514
113	0.518
114	0.522
115	0.530
116	0.538
117	0.540
118	0.540
119	0.540
120	0.546
121	0.548
122	0.556
123	0.562
124	0.568
125	0.570
126	0.570
127	0.570
128	0.570
129	0.570
130	0.570
131	0.570
132	0.570
133	0.570
134	0.570
135	0.570

Second	Composite (grams)
136	0.580
137	0.588
138	0.592
139	0.598
140	0.612
141	0.628
142	0.636
143	0.644
144	0.652
145	0.654
146	0.656
147	0.658
148	0.660
149	0.662
150	0.664
151	0.666
152	0.670
153	0.672
154	0.676
155	0.678
156	0.682
157	0.690
158	0.708
159	0.734
160	0.758
161	0.780
162	0.796
163	0.820
164	0.860
165	0.888
166	0.916
167	0.960
168	0.986
169	1.006
170	1.050
171	1.110
172	1.126
173	1.136
174	1.150
175	1.160
176	1.168
177	1.174
178	1.194
179	1.212
180	1.232
181	1.252
182	1.272
183	1.294
184	1.314
185	1.336
186	1.374
187	1.402
188	1.426

Second	Composite (grams)
189	1.448
190	1.466
191	1.486
192	1.510
193	1.538
194	1.566
195	1.592
196	1.610
197	1.634
198	1.650
199	1.676
200	1.704
201	1.734
202	1.748
203	1.758
204	1.758
205	1.760
206	1.762
207	1.772
208	1.786
209	1.800
210	1.810
211	1.820
212	1.844
213	1.866
214	1.896
215	1.916
216	1.946
217	1.966
218	1.980
219	1.998
220	2.006
221	2.018
222	2.020
223	2.026
224	2.034
225	2.036
226	2.036
227	2.036
228	2.036
229	2.036
230	2.036
231	2.036
232	2.038
233	2.038
234	2.038
235	2.038
236	2.038
237	2.038
238	2.038
239	2.038



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FINDING OF EMERGENCY

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

Many 1980 to 1986 model year vehicles cannot reasonably maintain a level of emissions that would comply with the emission limitations scheduled to go into effect on December 1, 1997, under the current rule. In addition, the number of 1990 and older model year vehicles that would need to be repaired in order to comply with these limitations may exceed the number of vehicles the repair industry could effectively repair. Finally, after December 1, 1997, no fast-pass emission limitations will apply to some 1994 and newer model year vehicles. (Fast-pass limitations enable very clean vehicles to pass the I/M program's emissions test in less time than the typical test.) Preservation of the public welfare necessitates the adoption of an emergency rule since: (1) the repairs that would need to be done on some 1990 and older model year vehicles attempting to comply with the emission limitations scheduled to go into effect on December 1, 1997, are likely to be costly and ineffective in keeping emissions low, and (2) the absence of fast-pass emission limitations for some newer vehicles would unnecessarily increase the time motorists would need to wait in line at the I/M test stations prior to having their vehicles tested.

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The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 3, 1997.

The rule shall take effect on January 1, 1998.

Dated at Madison, Wisconsin

December 5, 1997

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

BY

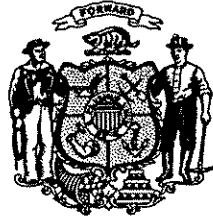
George E. Meyer  
George E. Meyer, Secretary

(SEAL)

***RULES CLEARINGHOUSE***

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



David J. Stute, Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

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**CLEARINGHOUSE REPORT TO AGENCY**

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

**CLEARINGHOUSE RULE 98-066**

AN ORDER to repeal and recreate chapter NR 300, relating to fees for waterway and wetland permit decisions.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

04-29-98 RECEIVED BY LEGISLATIVE COUNCIL.

05-20-98 REPORT SENT TO AGENCY.

RNS:AS:kjf;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

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

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

Comment Attached      YES       NO

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

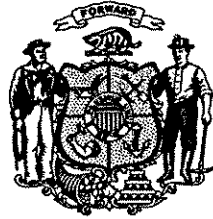
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



David J. Stute, Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## CLEARINGHOUSE RULE 98-066

### Comments

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

#### 2. Form, Style and Placement in Administrative Code

- a. In s. NR 300.01, "This chapter is" should replace "These rules are."
- b. In s. NR 300.03, "In this chapter:" should be inserted before sub. (1).
- c. Section NR 300.04 (4) (intro.) should be drafted as introductory text. For example, "within the time limits in pars. (a) and (b)" could be deleted and "within the following time limits:" could be inserted in place of the period at the end of the sentence.

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

- a. In s. NR 300.03 (8), the comma between "30" and "31" should be replaced with "or". Also, "employee" should be spelled "employe."
- b. In s. NR 300.03 (9), "ss." should be inserted before "31.02 to 31.38."
- c. In s. NR 300.04 (3), a definition of "timely" may be helpful.
- d. In s. NR 300.04 (4) (a) and (b), the colons should be replaced with commas.
- e. In s. NR 300.05 (1), "; its transcription if necessary" should be replaced with "and shall include a transcription of the hearing, if necessary,".

f. In s. NR 300.05 (2), it is not clear what “that it will not process after the fact permits or approvals” means.

g. In s. NR 300.05 (3) (intro.), “either” should be replaced with “any of the following.” Also, the subsequent paragraphs should end with periods.

h. In s. NR 300.05 (3) (d), “where” should be replaced with “if.”

i. In s. NR 300.05 (4), “When” should be replaced with “If.”

j. Section NR 300.06 (2) does not cover permits or approvals with an estimated time of exactly three hours or exactly nine hours. This could be corrected by substituting: (1) “3 hours or less” for “less than 3 hours” in par. (a); and (2) “not more than 9 hours” for “but less than 9 hours” in par. (b).

k. In s. NR 300.06 (3), the introductory paragraph does not introduce the material in par. (b). The subsection would be clearer if pars. (a) and (b) were combined with the introductory paragraph.

ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
REPEALING AND RECREATING RULES

*V. [unclear]*

The Wisconsin Natural Resources Board adopts an order to repeal and recreate ch. NR 300 relating to fees for waterway and wetland permit decisions.

FH-31-98

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 30.28, 31.39 and 281.22, Stats.

Statutes interpreted: ss. 30.10 to 30.205, 30.21 to 30.27, 31.02 to 31.185, 31.33 to 31.38 and 281.22, Stats.

This order sets standard timeframes for making decisions on proposed physical alterations affecting surface water resources, establishes a process for requesting expedited decision making, and sets fees for standard and expedited application review.

---

SECTION 1. NR 300 is repealed and recreated to read:

*Deck*

**Chapter NR 300  
FEES FOR WATERWAY AND WETLAND  
PERMIT DECISIONS**

NR 300.01 Purpose

NR 300.04 Time limits

NR 300.02 Applicability

NR 300.05 Exceptions to time limits

NR 300.03 Definitions

NR 300.06 Fee processing

**NR 300.01 Purpose.** These rules are developed pursuant to ss. 30.28, 31.39 and 281.22, Stats., to establish procedures for changing basic and supplemental fees for permits, approvals, determinations and hearings for projects in navigable waters.

**NR 300.02 Applicability.** This chapter is applicable to any application for a permit or approval pursuant to ss. 30.10 to 30.27 or ss. 31.02 to 31.38, Stats.

*In this s.:*

**NR 300.03 Definitions.** (1) "Application" means a form prescribed by the department to be completed by the owner, applicant or authorized agent for an activity which requires a permit or approval from the department, and any other information which can reasonably be required from an applicant and which the department needs to make a decision under applicable provisions of law, such as plans, property deeds, technical analysis or, where required pursuant to s. 23.11(5), Stats., an adequate environmental impact report.

(2) "Business day" means each day except Saturday, Sunday, January 1, the third Monday in January, the last Monday in May, July 4, the first Monday in September, the 4th Thursday in November, December 24, December 25 and December 31. If January 1, July 4, December 24, December 25 or December 31 fall on either a Saturday or a Sunday, the day designated as a paid holiday in lieu of the specific date is not a business day.

*by [unclear]*

(3) "Decision" means written permission, denial of permission or dismissal of an application in accordance with procedural and substantive requirements of law.

(4) "Department" means the department of natural resources.

(5) "EA" means an environmental assessment as defined in s. NR 150.02(11)

(6) "EIR" means environmental impact report as defined in s. NR 150.02(9)

(7) "EIS" means environmental impact statement as defined in s. NR 150.02(10).

(8) "Field investigation" means a physical inspection of the location of a proposed action requiring a permit or approval under ch. 30.31 or s. 281.22, Stats., and surrounding areas that may be directly or indirectly affected by the proposed action, carried out by an employee or agent of the department for the purpose of determining whether the proposed action meets applicable requirements of law.

(9) "Permit or approval" means a permit or approval pursuant to ss. 30.10 to 30.27 or 31.02 to 31.38, Stats.

**NR 300.04 Time limits** (1) Except as provided in s. NR 300.05, the time limits specified in sub. (2) shall be applied to decisions on fully completed applications for the water regulatory permits or approvals listed in s. NR 300.02

(2) The department shall review the application for completeness within 15 days of receipt of the application. The department shall notify the applicant of any additional information reasonably necessary to review the application. An application may not be considered complete until the requirements of the Wisconsin environmental policy act, s. 1.11, Stats., have been met and until all information necessary for associated permits, such as Wisconsin pollution discharge elimination permits under ch. 283, Stats., has been submitted to the department.

(3) The applicant shall submit in timely fashion, at any time during the review process, additional information the department finds to be reasonably necessary for review of the application.

(4) For any permit listed in s. NR 300.02, a decision shall be mailed to the applicant within the time limits in pars. (a) and (b) or the report required by s. 227.116 (4), Stats., shall be submitted:

(a) Permits where a class 1 legal notice under ch. 985, Stats., is required by law or deemed appropriate by the department, 150 business days.

(b) Other permits: 90 business days.

**NR 300.05 Exceptions to time limits.** When any of the following conditions are met, the time limits in s. NR 300.04 are not applicable:

(1) When a contested case hearing is required because a substantive written objection to the granting of a permit or approval by the department has been received in response to a public notice, or when a hearing is scheduled on the department's own motion, the department's decision shall be mailed to the applicant within 45 business days after completion of the hearing; its transcription if necessary, and subsequent filings.

(2) When the department has determined, due to an impending enforcement action, that it will not process after the fact permits or approvals.

(3) The time limits specified in s. NR 300.04 do not include the number of business days between either:

(a) The date a decision is made by the department to prepare an EIS and the date a final determination is made that the department has complied with s. 1.11, Stats.

(b) The date a request is made to an applicant for additional information necessary for the department to issue a decision under the applicable statute and the date that information is received by the department.

(c) The date a class 1 legal notice is mailed by the department and the date the department receives satisfactory proof of publication of that notice from the applicant, or

(d) November 1 of any calendar year and April 1 of the succeeding calendar year for applications received after October 1 where a field investigation is required before the department has adequate information to make a decision.

(4) When the department determines pursuant to ch. NR 150 that an EA is required for compliance with s. 1.11, Stats., the time limits specified in s. NR 300.04 shall be increased by 60 business days.

(5) If the department's action on a requested permit or approval is delayed or prevented by an order or decision of a court of law, the time limit specified in s. NR 300.04 shall be adjusted to conform to the court's decision or order.

(6) If the department's action on a requested permit or approval is delayed or prevented by the action or failure to act of an agency or private party other than the department or the applicant, the time limit specified in s. NR 300.04 shall be adjusted accordingly.

**NR 300.06 Fee processing (1) FEE REQUIREMENT.** The department shall charge a fee for permits or approvals. The permit or approval fee shall accompany the permit application or request for approval. Projects funded in whole or in part by any federal agency or state agency or any permits issued under s. 30.12(3)(a)2., 2m. or 3., Stats., are exempt from fees. Except for federal or state agency dam projects, any construction, alteration, change in operation, transfer, or abandonment of a dam requires a fee pursuant to s. 31.39(3), Stats.

(2) **BASIC FEES.** For fees charged for permits and approvals under ss. 30.10 to 30.205 and 30.21 to 30.27, 31.02 to 31.185, 31.33 to 31.38, and 281.22, Stats., the department shall classify the types of permits and approvals based on the estimated time spent by the department in reviewing, investigating and making determinations whether to grant the permits or approvals. The fees are established as follows:

(a) For a permit or approval with an estimated time of less than 3 hours, the fee shall be \$50.

(b) For a permit or approval with an estimated time of more than 3 hours but less than 9 hours, the fee shall be \$300.

(c) For a permit or approval with an estimated time of more than 9 hours, the fee shall be \$500.



(3) SUPPLEMENTAL FEES. When the applicant requests in writing that the permit be issued in a shorter time interval than the total time interval allowed in s. NR 300.04, the department shall respond in writing within 20 business days to state whether it can comply with the request. If the request to expedite the permit review is accepted by the department:

(a) The applicant shall submit \$2000 in supplemental fees for each expedited permit request which is accepted by the department, in addition to the applicable fees in sub. (2).

(b) If the department fails to make a decision on the completed application within the time limits requested, the department shall refund the supplemental fee.

(4) REFUNDS. The department shall refund a permit or approval fee if the applicant withdraws the application before the department determines that the application for the permit or approval is complete. The department may not refund a permit or approval fee after the department determines that the application is complete.

(5) LATE APPLICATION FEE. If the applicant applies for a permit or requests an approval after the project is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

(6) MULTIPLE FEES. If more than one fee is applicable to a project, the department shall charge only the highest fee of those that are applicable.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

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

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
George E. Meyer, Secretary

(SEAL)

ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
AMENDING RULES

APR 01 1998

The Wisconsin Natural Resources Board adopts an emergency order to repeal and recreate ch. NR 300 relating to fees for waterway and wetland permit decisions.

FH-30-98(E)

BOB

BF

Analysis Prepared by the Department of Natural Resources

FILE

TOSS

Statutory authority: ss. 30.28, 31.39 and 281.22, Stats.

Statutes interpreted: ss. 30.10 to 30.205, 30.21 to 30.27, 31.02 to 31.185, 31.33 to 31.38 and 281.22., Stats.

This order sets standard timeframes for making decisions on proposed physical alterations affecting surface water resources, establishes a process for requesting expedited decision making, and sets fees for standard and expedited application review.

SECTION 1. NR 300 is repealed and recreated to read:

**Chapter NR 300  
FEES FOR WATERWAY AND WETLAND  
PERMIT DECISIONS**

NR 300.01 Purpose

NR 300.04 Time limits

NR 300.02 Applicability

NR 300.05 Exceptions to time limits

NR 300.03 Definitions

NR 300.06 Fee processing

**NR 300.01 Purpose.** These rules are developed pursuant to ss. 30.28, 31.39 and 281.22, Stats., to establish procedures for changing basic and supplemental fees for permits, approvals, determinations and hearings for projects in navigable waters.

**NR 300.02 Applicability.** This chapter is applicable to any application for a permit or approval pursuant to ss. 30.10 to 30.27 or ss. 31.02 to 31.38, Stats.

**NR 300.03 Definitions.** (1) "Application" means a form prescribed by the department to be completed by the owner, applicant or authorized agent for an activity which requires a permit or approval from the department, and any other information which can reasonably be required from an applicant and which the department needs to make a decision under applicable provisions of law, such as plans, property deeds, technical analysis or, where required pursuant to s. 23.11(5), Stats., an adequate environmental impact report.

(2) "Business day" means each day except Saturday, Sunday, January 1, the third Monday in January, the last Monday in May, July 4, the first Monday in September, the 4th Thursday in November, December 24, December 25 and December 31. If January 1, July 4, December 24, December 25 or December 31 fall on either a Saturday or a Sunday, the day designated as a paid holiday in lieu of the specific date is not a business day.

(3) "Decision" means written permission, denial of permission or dismissal of an application in accordance with procedural and substantive requirements of law.

(4) "Department" means the department of natural resources.

(5) "EA" means an environmental assessment as defined in s. NR 150.02(11)

(6) "EIR" means environmental impact report as defined in s. NR 150.02(9)

(7) "EIS" means environmental impact statement as defined in s. NR 150.02(10).

(8) "Field investigation" means a physical inspection of the location of a proposed action requiring a permit or approval under ch. 30, 31 or s. 281.22, Stats., and surrounding areas that may be directly or indirectly affected by the proposed action, carried out by an employee or agent of the department for the purpose of determining whether the proposed action meets applicable requirements of law.

(9) "Permit or approval" means a permit or approval pursuant to ss. 30.10 to 30.27 or 31.02 to 31.38, Stats.

**NR 300.04 Time limits** (1) Except as provided in s. NR 300.05, the time limits specified in sub. (2) shall be applied to decisions on fully completed applications for the water regulatory permits or approvals listed in s. NR 300.02

(2) The department shall review the application for completeness within 15 days of receipt of the application. The department shall notify the applicant of any additional information reasonably necessary to review the application. An application may not be considered complete until the requirements of the Wisconsin environmental policy act, s. 1.11, Stats., have been met and until all information necessary for associated permits, such as Wisconsin pollution discharge elimination permits under ch. 283, Stats., has been submitted to the department.

(3) The applicant shall submit in timely fashion, at any time during the review process, additional information the department finds to be reasonably necessary for review of the application.

(4) For any permit listed in s. NR 300.02, a decision shall be mailed to the applicant within the time limits in pars. (a) and (b) or the report required by s. 227.116 (4), Stats., shall be submitted.

(a) Permits where a class 1 legal notice under ch. 985, Stats., is required by law or deemed appropriate by the department: 150 business days.

(b) Other permits: 90 business days.

**NR 300.05 Exceptions to time limits.** When any of the following conditions are met, the time limits in s. NR 300.04 are not applicable:

(1) When a contested case hearing is required because a substantive written objection to the granting of a permit or approval by the department has been received in response to a public notice, or when a hearing is scheduled on the department's own motion, the department's decision shall be mailed to the applicant within 45 business days after completion of the hearing; its transcription if necessary, and subsequent filings.