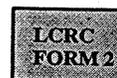


WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Terry C. Anderson, 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 REPORT TO AGENCY

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

CLEARINGHOUSE RULE 00-082

AN ORDER to create chapter Adm 45, relating to low income assistance benefits.

Submitted by **DEPARTMENT OF ADMINISTRATION**

04-25-00 RECEIVED BY LEGISLATIVE COUNCIL.

05-19-00 REPORT SENT TO AGENCY.

RNS:DLL:jal;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

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CLEARINGHOUSE RULE 00-082

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 September 1998.]

I. Statutory Authority

This rule appears to use the fewest words possible to comply with the requirement that rules be promulgated. The result is a rule, but not a program. Clearly, by requiring the department to promulgate rules, the Legislature intended the department to flesh out the programs it was creating and to specify minimum program requirements in a process that is open to the public and subject to legislative review. In strong contrast to this, the rule reveals almost none of the mysteries of how this program will be implemented.

In particular, s. 16.957 (2) (c) 2., Stats., requires the department to promulgate rules establishing requirements and procedures for applications for grants awarded under public benefit programs. Section Adm 45.05 contains the few provisions that relate to this topic, stating in one brief paragraph that eligible households may apply for benefits to the department or a program administrator, using forms prescribed by the department executed by at least one member of the eligible household. No further detail is given. The department has not included the forms with the rule, so the Rules Clearinghouse cannot evaluate their content. Presumably, there will be more than one type of benefit available under the program, to which different eligibility requirements and application information and review requirements may apply. There should also be requirements for processing and acting upon applications and for appeal of benefit denials. These are the kinds of requirements and procedures that should be included in the rule.

2. Form, Style and Placement in Administrative Code

a. The analysis of the rule is entirely inadequate. It neither analyzes nor explains the provisions of the rule, but instead merely states the subject of the rule in a paraphrased restatement of the statutes that require the rule.

b. Given the brevity of the new chapter created by this rule and the close relationship between it and the new chapters created in Clearinghouse Rules 00-80 and 00-81, the department may want to consider creating them as three subchapters of a single chapter of the Wisconsin Administrative Code.

c. The term defined in s. Adm 45.03 (3) should be placed in alphabetical order with the other terms defined.

d. Section Adm 45.04 uses the undefined term "low-income assistance." The term should either be defined or be replaced with a more fully descriptive phrase. Alternatively, the rule could include a description of the benefits available under the program and this term could be replaced by a reference to those benefits.

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

a. In ch. Adm 45 (title) and s. Adm 45.03 (5), "low income" should be hyphenated.

b. In s. Adm 45.04 (2) (a), "programs" should replace "program."

c. Section Adm 45.05 states that applicants may apply to the department or to a contractor. Under what circumstances is an applicant to apply to the department and under what circumstances is an applicant to apply to a contractor, and in that case, to what contractor? Or is this choice at the discretion of the applicant? This should be clarified. If the rule gave a complete set of requirements and procedures for the program, these points would be clearer.

PROPOSED ORDER OF THE DEPARTMENT OF ADMINISTRATION

The Wisconsin Department of Administration proposes an order to create chapter Adm 45 of the Wisconsin Administrative Code, relating to Low Income Assistance Public Benefits.

Analysis Prepared by the Department of Administration:

Statutory Authority: ss. 16.004(1) and 16.957(2)(c), Stats.

Statutes Interpreted: s. 16.957(2)(a), Stats.

Under s. 16.957(2)(c), Stats., the Department of Administration is required to promulgate rules for low-income public benefits programs. The proposed rule establishes eligibility and application requirements and procedures for assistance under a low-income public benefits program established under s. 16.957(2)(a), Stats.

Initial Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

TEXT OF RULE:

SECTION 1: Adm 45 is created to read.

Chapter Adm 45

Low Income Assistance Public Benefits.

Adm 45.01 Authority. Sections 16.004(1) and 16.957(2)(c), Stats., authorize the department to promulgate rules for low-income public benefits programs.

Adm 45.02 Purpose. The purpose of this chapter is to establish eligibility and application requirements and procedures for assistance under a low-income public benefits program established under s. 16.957(2)(a), Stats.

Adm 45.03 Definitions. In this chapter:

- (2) *Substance*
- (1) "Contractor" means a community action agency described in s. 46.30(2)(a)1., Stats., a nonstock, nonprofit corporation organized under ch. 181, or a local unit of government under contract with the department that provides services under a public benefits program.
- (2) "Department" means the department of administration.
- adp.* (3) "Benefit" means an award of financial or other assistance by the department or through a contractor to an eligible household under a public benefits program.

- (4) "Household" has the meaning set forth in s. 16.385(1)(c), Stats.
- (5) "Low income public benefits program" means a program established in accordance with s. 16.957(2)(a), Stats.
- (6) "Person" has the meaning set forth in s. 990.01(26), Stats.
- (7) "Secured child caring institution" has the meaning specified in s. 938.02(15g), Stats.
- (8) "Secured correctional facility" has the meaning specified in s. 938.02(15m), Stats.
- (9) "State prison" has the meaning specified in s. 302.01, Stats.

Adm 45.04 Eligibility requirements. (1) A person or household eligible to receive low-income assistance from federally funded programs specified in ss. 16.385 and 16.39, Stats., shall be eligible for low-income assistance through a low income public benefits program.

2
not defined - more general term might be better.

(2) The following are not eligible for low-income assistance under a low-income public benefits program:

(a) A person or household eligible to receive low-income assistance from a municipal utility or retail electric cooperative that elects to operate a commitment to community program as specified in s. 16.957(5)(d) 2.b. or 3.a., Stats.

+ (5) (e) (1) (2)

AAK

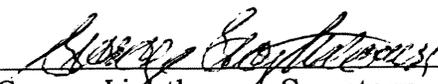
(b) A person who is imprisoned in a state prison or a person placed at a secure correctional facility or a secured child caring institution.

Adm 45.05 Application requirements. An eligible household may apply for a benefit from a low-income public benefits program by completing an application on forms prescribed by the department. An application shall be submitted to the department or a contractor as directed on the form. All applications must be executed by at least one individual from the eligible household.

Note: Application materials may be obtained from the applicant's local county social services agency.

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Dated: 4-24-00


George Lightbourn, Secretary
Department of Administration

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



AUG 14 2000

Office of the Secretary
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1741
Fax (608) 267-3842
TTY (608) 267-9629

August 1, 2000

Honorable Fred Risser, President
Wisconsin Senate
220 South, State Capitol
Madison, WI 53702

Honorable Scott Jensen, Speaker
Wisconsin Assembly
211 West, State Capitol
Madison, WI 53702

Dear Senator Risser and Representative Jensen:

RE: Clearinghouse Rule No. 00-082

Enclosed in final draft form is Chapter Adm 45, Wis. Adm. Code, relating to the Wisconsin Utility Public Benefits Program. The fiscal estimate is also attached.

A copy of the Legislative Council Rules Clearinghouse Report is enclosed. All of the comments of the Clearinghouse have been addressed or incorporated into the rule. A public hearing was held on the rule on June 16, 2000, in Madison. The names of the persons who appeared at the hearing are provided on the enclosed hearing registration forms.

Also enclosed is a transcript of the hearing and copies of the written comments received by the Department in response to the proposed rule. The final enclosure is a summary of all the comments received by the Department and the Department's response to those comments. This document explains the modifications made to the proposed rule as a result of the comments received by the Department.

We request submittal of the rule to the appropriate standing committees for review.

Sincerely,


George Lightbourn
Secretary

cc: Revisor of Statutes
Joint Committee on Review of Administrative Rules

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



Office of the Secretary
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We request submittal of the rule to the appropriate standing committees for review.

Sincerely,


George Lightbourn
Secretary

cc: Revisor of Statutes
Joint Committee on Review of Administrative Rules

PROPOSED ORDER OF THE DEPARTMENT OF ADMINISTRATION

The Wisconsin Department of Administration proposes an order to create chapter Adm 45 of the Wisconsin Administrative Code, relating to Low Income Assistance Public Benefits.

Analysis Prepared by the Department of Administration:

Statutory Authority: ss. 16.004(1) and 16.957(2) (c) 2., Stats.

Statutes Interpreted: s. 16.957(2) (a), Stats.

Under s. 16.957(2)(c), Stats., the Department of Administration is required to promulgate rules for low-income public benefits programs. The proposed rule establishes eligibility and application requirements and procedures for assistance under a low-income public benefits program established under s. 16.957(2)(a), Stats.

It is the Department's understanding that the Legislature's intent for this rule was to build upon and transition from the Low-Income Home Energy Assistance Program (LIHEAP) and the Low-Income Weatherization Assistance Program (LIWAP) currently administered by the Department under ss. 16.385 and 16.39, Stats., respectively. The Department presently utilizes extensive, detailed policy and procedure manuals under which those programs operate. Annual plans are also prepared for each of these programs which are submitted to the federal government as required by the U.S. Department of Housing and Urban Development after extensive opportunities for public input, including public hearings. Because these programs, and the public benefits programs yet to be developed in concert with them under s. 16.957(2)(a), Stats., must be implemented during the heating season, they must be able to react to significant fluctuations of weather, energy costs and energy shortages in a relatively short period of time. For these reasons, this proposed rule is intentionally succinct, yet flexible in order to account for the specific needs of low-income assistance programs envisioned.

Section Adm 45.03 provides a definition for "contractor" that follows the statutory requirement that the Department contract for delivery of low-income assistance programs with community action agencies, non-stock, nonprofit corporations, or local units of government. However, as is the present practice under the LIHEAP and LIWAP programs, the Department's contractor(s) may on occasion subcontract with private entities to perform certain functions or services, depending upon the scope and needs of the new public benefits programs.

Section Adm 45.04 identifies the persons or households eligible to receive low-income assistance, which follows the statutory requirements. It also details those persons or households not eligible for such assistance, including those who will receive low-income assistance from municipal utility or retail electric cooperatives which in turn elect to operate a community program under s. 16.957(5)(d), Stats., and anyone presently imprisoned in a state institution.

Section Adm 45.05 provides that in consultation with the Council on Utility Public Benefits, the Department will annually announce new or continued low-income assistance programs, at which time they will provide specific information on the application process and eligibility criteria. This rule is general in nature, in order to allow for specific program details to be provided as programs are developed.

Section Adm 45.06 provides minimum application requirements necessary for the Department or its contractors to provide services should the application be approved. Any application received must be approved or denied within 45 days of the receipt of the completed application by either the Department, or the approving authority as stated in the program announcement. A person or household whose application is denied may request the approving authority to review it for accuracy of information and appropriateness of designation. Presently, the low-income assistance programs administered by the Department utilize the contested case procedure under s. 227.44, Stats. The Department intends that procedure will be utilized under any extension or expansion of the existing programs pursuant to the public benefits legislation, as well as to new programs developed thereunder.

Final Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

TEXT OF RULE:

Section 1 Adm 45 is created to read:

Chapter Adm 45

Low-Income Assistance Public Benefits.

Adm 45.01 Authority. Sections 16.004(1) and 16.957(2)(c) 2., Stats., authorize the department to promulgate rules for low-income assistance public benefits programs.

Adm 45.02 Purpose. The purpose of this chapter is to establish general eligibility and application requirements and procedures for assistance under a low-income public benefits program established under s. 16.957(2)(a), Stats.

Adm 45.03 Definitions. In this chapter:

(1) "Approving authority" means the department or a contractor responsible for application review and program eligibility determination designated by the department.

(2) "Benefit" means an award of financial or other assistance by the department or a contractor designated by the department to an eligible household under a public benefits program.

(3) "Contractor" means a community action agency described in s.46.30(2)(a)1., Stats., a nonstock, nonprofit corporation organized under ch. 181, Stats., or a local unit of government under contract with the department that provides services under a public benefits program.

(4) "Department" means the department of administration.

(5) "Household" has the meaning set forth in s. 16.385(1)(c), Stats.

(6) "Low income public benefits program" means a program established in accordance with s. 16.957(2)(a), Stats.

(7) "Person" has the meaning set forth in s. 990.01(26), Stats.

(8) "Secured child caring institution" has the meaning specified in s. 938.02(15g), Stats.

(9) "Secured correctional facility" has the meaning specified in s. 938.02(15m), Stats.

(10) "State prison" has the meaning specified in s. 302.01, Stats.

Adm 45.04 Eligibility requirements. (1) A person or household eligible to receive fuel bill payment assistance, early identification crisis assistance, weatherization or conservation services, and similar low-income assistance from federally funded programs specified in ss. 16.385 and 16.39, Stats., shall be eligible for assistance through a low-income public benefits program.

(2) The following are not eligible for assistance under a low-income public benefits program:

(a) A person or household eligible to receive low-income assistance from a municipal utility or retail electric cooperative that elects to operate a commitment to community program as specified in s. 16.957(5)(d), Stats.

(b) A person who is imprisoned in a state prison or a person placed at a secure correctional facility or a secured child caring institution.

Adm 45.05 Program elements. In consultation with the council on utility public benefits, the department shall annually announce new or continued programs offered by the department that will provide low-income assistance. The department shall also provide specific information on the application process, where to obtain an application, the eligibility criteria, and where to file

the application for each program created or continued under s. 16.957(2)(a), Stats.

Adm 45.06 Application requirements. (1) A person or household may apply for a benefit from a low-income public benefits program by completing an application on forms prescribed by the department. At a minimum an application shall contain the names and ages of all household members, residence address, actual or estimated fuel use, documentation of income, the names of home energy providers and the social security number of the head-of-household.

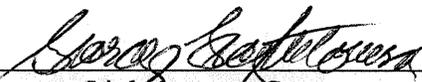
(2) An application shall be submitted to the approving authority identified on the form. All applications shall be executed by at least one individual from the eligible person or household.

(3) An application shall be approved or denied within 45 days of the receipt of the completed application by the approving authority.

(4) A person or household whose application is denied may request the approving authority to review the application for accuracy of information and the appropriateness of designation.

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Dated: 8-7-00


George Lightbourn, Secretary
Department of Administration

FISCAL ESTIMATE FORM

1999 Session

X ORIGINAL

UPDATED

CORRECTED

SUPPLEMENTAL

LRB #

INTRODUCTION #

Admin. Rule # Dept of Admin Chap 45

Subject

Low Income Assistance Public Benefits

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

Decrease Costs

Create New Appropriation

Local: No local government costs

1. Increase Costs

Permissive Mandatory

3. Increase Revenues

Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

2. Decrease Costs

Permissive Mandatory

4. Decrease Revenues

Permissive Mandatory

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

The administrative rule proposes eligibility and applications requirements and procedures for assistance under a low-income public benefits program. The department is reviewing staffing requirements for the program and what cost may be associated with those requirements.

Long-Range Fiscal Implications:

Ongoing costs for the duration of the program.

Prepared By: / Phone # / Agency Name
Richard Wagner/ 608-266-0653 /DOA

Authorized Signature / Telephone No.
Chuck McDowell / 608-267-8836

Date
4/11/00

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 45
Low-income Assistance Public Benefits
June 16, 2000
12:00 p.m.**

REGISTRATION

NAME: GREGORY BULLOM

ADDRESS: PO Box 1231

MADISON, WI 53701-1231

PHONE: 608/252-4748

REPRESENTING: MADISON GAS & ELECTRIC CO.

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

**WISCONSIN DEPARTMENT OF ADMINISTRATION
PUBLIC HEARING**

**CHAPTER ADM 45
Low-income Assistance Public Benefits
June 16, 2000
12:00 p.m.**

REGISTRATION

NAME: George Edgar

ADDRESS: 211 S. Paterson, Third Floor
Madison, WI. 53703

PHONE: 608-249-9322 x170

REPRESENTING: Wisconsin Energy Conservation Corporation

Please check applicable statement(s):

- Appearing in favor.
- Appearing in opposition.
- Appearing for informational purposes.
- I wish to testify.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



Office of the Secretary
Post Office Box 7
Madison, WI 53707-7
Voice (608) 266-1
Fax (608) 267-3
TTY (608) 267-9

Department of Administration
Division of Energy

PUBLIC HEARING ON UTILITY PUBLIC BENEFITS

Department of Administration Building
101 East Wilson Street
St. Croix Room, First Floor
June 16, 2000
Public Hearing on Adm 45
Low Income Assistance Public Benefits

Administration Rule 45

Mr. Mark Saunders called the meeting to order at 12:00 A.M. He welcomed everyone for attending, same group was at hearing, introductory remarks were waived.

The Department of Administration has set this time and place for a public hearing under ss. 16.004(1), 16.957(4)(b) and 227.11(2)(a), of the Wisconsin Statutes, in order to consider the creation of rules relating to Utility Public Benefits Fees. My name is Mark Saunders and I'm the Deputy Legal Counsel for the Department of Administration. With me is Pat Meier, Director of the Bureau of Energy in the Department of Administration, Luann Wickeham, Assistant to Mr. Marx, and Donna Sorenson, paralegal, Office of Legal Counsel.

Notice of this public hearing and proposed rule adoption was published in the May 31, 2000, issue of the Wisconsin Administrative Register. In addition, copies of the rule and notice were made available to interested parties. Also, on June 2, 2000, copies were hand-delivered to the Press Boxes located in Room 235, Southwest in the State Capitol Building

The proposed rule creates Chapter Adm 45 of the Wisconsin Administrative Code. Pursuant to s. 16.957(2)(c), of the Statutes, the Department of Administration is required to promulgate rules for low-income public benefits programs. The proposed rule establishes eligibility and application requirements and procedures for assistance under a low-income public benefits program established under s. 16.957(2)(a), Stats.

The purpose of today's hearing is to give all interested persons or their representatives an opportunity to present facts, views or arguments regarding proposed Adm 45. In addition to today's testimony, the department will accept written comments or questions received by Friday, June 30, 2000. Please direct written comments to Donna Sorenson, Department of Administration, 101 East Wilson Street, P.O. Box 7864, Madison, Wisconsin 53707.

Section 227.18(3) of the Statutes requires that all persons present at this hearing have an opportunity to present their arguments and comments to the agency officer responsible for promulgating these rules; that is, the Secretary of the Department of Administration. The

June 19, 2000

Page 2 of 2

Secretary has determined that argument to him should be made in writing rather than orally. Consequently, a transcript of this hearing, along with your written comments will be provided to him prior to final promulgation of this rule.

The proposed rule was submitted to the Wisconsin Legislative Council Rules Clearinghouse on April 25, 2000 for its review, analysis and recommendations. The Legislative Council issued its report on the proposed rule on May 19, 2000. Based on the suggestions from the Rules Clearinghouse, and your oral and written comments and suggestions, the Department of Administration will consider amending the rule before forwarding it to the presiding officers of each house of the legislature for final promulgation.

The statutes also require that the UPB Rule be promulgated as an emergency rule. Upon the advice and request of the Council on Utility Public Benefits, the Department of Administration has delayed that process in order to consider incorporating your comments and suggestions and those from the Rules Clearinghouse as well.

So for those of you who have inquired, there are no emergency rules in effect.

There are appearance slips in the back for you to fill out. You are not required to do so, unless you want to testify. But we would like to maintain a record of attendees, and you can simply register your position--for, against or neutral--without having to testify. I'll go through the appearance slips to see who wants to give testimony on the rule. When I call you, please state your name, who you are representing and if you are testifying in favor or in opposition to the proposed rule. In the interest of time, I ask that you try to limit your comments to a reasonable amount.

Thank you.

Mark Saunders:

12:00 P.M.

No appearance slips were submitted to testify. Call for anyone to testify. No one requested to be heard. A break was called for.

12:05 P.M.

Break was taken, no parties were interested or available to testify. Public Hearing for Adm 45 was adjourned.

G:\energy\public benefits\public hearing.6.16.adm45

ADELMAN & HYNES, S.C.
ATTORNEYS AT LAW
308 EAST JUNEAU AVENUE
MILWAUKEE, WISCONSIN 53202

Elizabeth Adelman
Jeffrey S. Hynes
Jon Deitrich
Jonathan D. Richards
Paul A. Oberer
Jason A. Kunschke
Donna Billman

TELEPHONE (414)225-2920
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E-Mail: hynes @execpc.com

S68 W17801 East Drive
Muskego WI 53150

The information contained in this facsimile message is intended only for the personal and confidential use of the designated recipient or any agent responsible for delivering it to the intended recipient. You are hereby notified that if you have received this document in error, any review, dissemination, distribution, or copying of this message is strictly prohibited. If you received this communication in error, please notify us immediately by telephone and return the original message to us by mail. Thank you.

FACSIMILE COVER SHEET

Date: 6/30/00 Time: _____
To: Donna Sorenson
At: Department of Administration
Fax No.: (608) 267-3842 No. of Pages: 4
From: Jeffrey S. Hynes
Re: Independent Heating Contractors Association
Message: Please see the attached. Thank you!

If there are problems in transmission or reception, please call SHARON at (414) 225-2920 as soon as possible.

Thank you!

Case No.: _____

ADELMAN & HYNES, S.C.ATTORNEYS AT LAW
308 EAST JUNEAU AVENUE
MILWAUKEE, WISCONSIN 53202ELIZABETH ADELMAN
JEFFREY S. HYNES
JON DEITRICH
JONATHAN D. RICHARDS
JERALYN B. WENDELBERGER*
PAUL A. OBERER
JASON A. KUNSCHKETELEPHONE (414) 225-2920
FAX (414) 225-2926368 W17801 East Drive
Muskego, WI 53150

*ALSO LICENSED TO PRACTICE IN WASHINGTON, D.C.

June 30, 2000

VIA FACSIMILE & U.S. MAIL (608) 267-3842Donna Sorenson
Department of Administration
P. O. Box 7864
Madison WI 53707-7864

Re: Comments of Independent Heating Contractors Association

Dear Ms. Sorenson:

Our law firm is counsel to the Independent Heating Contractors Association, a group of approximately 100 heating and air conditioning contractors who perform services throughout the State of Wisconsin. As small businesses in a competitive industry, we know all too well how important it is to have adequate safeguards in place prior to the implementation of programs relating to energy conservation and low income assistance. We have reviewed the several proposed regulations relating to these areas, each of which were scheduled for hearing in June. As we were unable to make the hearing dates, we wish to submit the following comments:

1. With respect to the low income program, we note that there is confusion concerning the definition of the term "contractor." For example, the "definitions" section of proposed **Admin Rule 45.03** implies that a "contractor," for the purposes of these programs, includes only nonstock, nonprofit corporations. Interpreting the regulation in this manner would have the effect of excluding an entire industry of independent private sector businesses that have long performed most, if not all, of the work in question. We believe that the interpretation suggested by the proposed language represents an inadvertent oversight that could not possibly have been intended by the regulations' drafters. We request that you contact us to confirm the same and to further confirm that the language in the definition will be appropriately modified so as not to create the impression that the work done under the massive low income energy program would somehow be monopolized by the nonprofit sector. In the event that it is in fact the Agency's intention to exclude private sector contractors from the definition set forth in proposed Administrative Rule 45.03, we would ask that we be given the opportunity to present full

Donna Sorenson
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and complete evidence concerning the deleterious effect that such an approach would have on fair competition and on the thousands of contractors and other members of the public who would be affected by this change. We would also request that a further public hearing or meeting between IHCA and your Agency be scheduled to discuss the definition contained in the regulation.

2. The proposed regulations also fail to address the issue of who might be the most effective "lead" or general contractor to administer and implement the conservation/low income assistance programs in question. We believe that the presumption that social service agencies are the most efficient and effective provider of services is a myth, which is unsupported by any empirical evidence and contradicted by the history of these programs. For example, with respect to conservation programs, there is absolutely no reason to believe that a social service agency would be more effective than private sector contractors and/or their affiliate organizations in providing the services in question. We respectfully request that, prior to further promulgation or implementation of the regulations in question, the Department conduct a full and thorough analysis of which service groups or entities would be most effective in implementing the objectives of the programs in question. In conducting that analysis, we would request that appropriate consideration be given to the principles of "fair competition" and to the notion that private sector contractors can be (and have in the past been) prompt, efficient and successful in implementing the goals of these programs. We are more effective than the social service agencies for a host of reasons, not the least of which is that the contractors are in direct contact with customers and the consuming public on a day to day basis. Our objective in this regard would be to meet with your staff people to provide meaningful input into the initial decision concerning which agencies or organizations would be most effective in pursuing and implementing the conservation and low income goals set forth in the statute and implementing regulations.
3. The proposed regulations contain little if any meaningful safeguards to insure that the substantial money which taxpayers (and ratepayers) are being asked to put into these programs will be used in the most efficient and effective manner possible. For example, we note that the procedures for "bidding" and selecting of contractors for the various projects which will arise under these regulations are ambiguous and trite, and essentially leave the public and contractors in the dark concerning specific criteria that are to be used when awarding contracts. This has been an area wrought with abuse in the past; we would hope that you would work with IHCA and other groups and organizations to identify the specific problems that have lead to past abuses, so as to avoid the specter of history repeating itself under the new regulatory scheme.

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4. We take strong issue with the fact that the regulations do not clearly spell out the financial reality faced by ratepayers under the new programs addressed in the regulations. Specifically, we note that ratepayers currently pay just pennies out of their monthly bill for conservation/low income programs. Under the new regulatory scheme, they will now be required to pay substantially more. Because the regs do not clearly disclose these facts, it is impossible to determine precisely what the financial burden will be to the consuming public. It would seem inexcusable not to fully disclose this information and to allow ratepayers, businesses and other members of the consuming (and tax paying) public to have meaningful input into the development of these regulations.

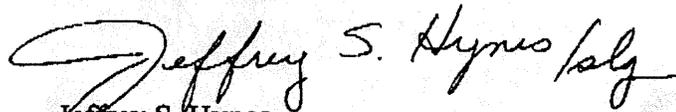
We believe that this and other subjects set forth above should be subjected to careful scrutiny, including oversight and review by the Public Service Commission and appropriate legislative committees, to insure that the activities conducted under these programs are carried out in a manner that is in the public interest and consistent with the fundamental goals and principles of accountability, full disclosure and fair competition.

We are hereby requesting that additional hearings be held and that all interested parties be invited to provide knowledge and input concerning the promulgation and implementation of these and any other proposed regulations relating to energy conservation and low income programs.

Thank you for considering our position.

Very truly yours,

ADELMAN & HYNES, S.C.



Jeffrey S. Hynes
Counsel for Independent Heating
Contractors Association

JSH/slg

cc: Jane Blank

Summary of rule revisions based on comments from the Rules Clearinghouse, hearing testimony and written comments received by the Department:

CLEARINGHOUSE RULE 00-082

CHAPTER Adm 45

DEPARTMENT RESPONSE TO RULES CLEARINGHOUSE
RECOMMENDATIONS

1. STATUTORY AUTHORITY

The Department intentionally proposed a succinct rule in order to allow the delivery of public benefits low-income programs in concert with existing, federally funded, low-income assistance programs operated in concert with ss. 16.385 and 16.39, Stats. The Department understood that the drafters' intent was to avoid adding a layer of bureaucracy or further complexity for the average citizen to negotiate in order to receive benefits under low-income assistance programs developed under the public benefits legislation.

The statute's drafters clearly recognized that low-income grant programs already exist in the form of the Low-Income Home Energy Assistance Program (LIHEAP) and the Low-Income Weatherization Assistance Program (LIWAP). The Department presently utilizes extensive policy and procedure manuals detailing operations of both of these programs. (Copies of the table of contents for both manuals are attached for reference. Because each is several inches thick, copies of the complete manual were not attached but will be provided upon request.) Annual plans are prepared and submitted to the federal government after extensive opportunities for public input, including public hearings. Both programs must consider changes on an annual basis relative to a federal plan. These changes take into account that the programs must be implemented during the heating season and must be able to react to significant fluctuations of weather conditions, energy costs, and energy shortages over a relatively short period of time.

The Department intends that public benefits low-income assistance programs will expand upon these existing programs and enhance or improve them, so that providers and recipients would see this as a comprehensive low-income initiative with multiple components, as opposed to multiple programs with different applications and eligibility requirements. Furthermore, it is not clear that the legislature intended for the Department to develop the details of specific low-income assistance programs beyond those already in place under the LIHEAP and LIWAP programs. In fact, much of the discussion prior to enactment centered on the concept of privatization and the necessary role of the market place in making these programs work successfully. It was envisioned that the Department's role was to contract for the administration of these programs. The rules were drafted to maximize consistency between the existing LIHEAP and LIWAP

statutes and the public benefits legislation in order to provide efficient delivery of low-income programs.

To the extent new programs are developed under the public benefits legislation, the Department will provide the level of detail in the existing programs, and in the same manner. The time required to amend an administrative rule, even through emergency promulgation, would make it virtually impossible for the Department to react in a responsible manner if such diverse and arcane program details were included in an administrative rule.

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE

- a. The Rules Clearinghouse recommendation was adopted. The analysis accompanying the rule has been expanded.
- b. It was not deemed prudent by the Department, the Council on Utility Public Benefits, and low-income assistance providers to combine this rules chapter with Clearinghouse Rules 00-080 (ch. Adm 43) and 00-081 (ch. Adm 44) because they deal with separate, discrete elements of the public benefits initiative.
- c. The Rules Clearinghouse recommendation was adopted.
- d. The Rules Clearinghouse recommendation was adopted. A general description of benefits constituting low-income assistance has been added to s. Adm 45.04.

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE

- a. The Rules Clearinghouse recommendation was adopted.
- b. The Rules Clearinghouse recommendation was adopted.
- c. The rule has been rewritten to clarify that an application should be submitted to the "approving authority." This term, in turn, has been defined in s. Adm 45.03 (1). This clarifies that applications will either be made to the Department, or the Department's designated contractor, depending on the program developed.

DEPARTMENT RESPONSE TO WRITTEN COMMENTS

JEFFREY S. HYNES, ADELMAN & HYNES, S.C., JUNE 30, 2000.

Adelman & Hynes were concerned that a contractor under the rule would include only non-stock, non-profit corporations. This law firm was also concerned that the apparent rule presumption that social service agencies would be the most efficient and effective provider of services was unsupported by imperial evidence, and that private sector contractors or their affiliate organizations would also be able to provide those services just as efficiently. They also expressed concern that the procedures for bidding for and selection of contractors were "ambiguous and trite," and essentially would leave the public and the contractors without any idea of any of the specific criteria used to award contracts. Finally, they expressed strong concern that the ratepayers under the new programs would not know how much their monthly electric bills would be charged for these programs.

Response:

Section 16.957 (3) (a), Stats., requires the Department to contract with community action agencies, non-stock, non-profit organizations or local units of governments to provide the services established under the public benefits legislation. The legislature apparently *does* presume that social service agencies and other public entities can provide more efficient and effective services than the private sector. However, neither the statute nor the rule precludes private, for-profit businesses from *subcontracting* with the Department's contractors as the need may arise under certain programs.

Section 16.957 (3) (a), Stats., also requires contracts to be let on the basis of competitive bids. All competitive bidding done by the Department follows the statutory and extensive regulatory requirements for competitive bidding found in chapter 16, Stats., and the extensive procurement policy manual promulgated thereunder. The Department traditionally uses these regulations not only for contracting but also for soliciting grant applications and awarding grants. Related federal low-income assistance programs utilize similar, extensive safeguards to ensure fairness.

The public benefit fee information can be found in proposed rule ch. Adm 43, which addresses the calculation, apportionment, and collection of the public benefits fee. The fee will be set by a statutory formula and through an "iterative" process whereby an amount is derived such that all utilities can be assured of billing their residential customers a uniform amount. Present preliminary calculations for the first year indicate that each residential customer (one electric meter=one customer) statewide will pay approximately \$1.50 per month.

DEBBY EATON, REPRESENTING HERSELF, JUNE 27, 2000.

Ms. Eaton's comments generally mirrored those of Adelman & Hynes. She asked that these new rules not start in fiscal year 2000-2001. She also was concerned that existing low-income assistance programs would be discontinued.

Response:

Please refer to the comments to Adelman & Hynes concerns. The statute mandates that the rules for implementing these programs be promulgated at this time. It will take time to develop and implement them, however, and the Department intends to involve diverse groups such as referenced in her comments in that process. Also, existing low-income assistance programs will not be discontinued. In fact they will be supplemented and will form the basis for new programs.

BOB JONES, WISCONSIN COMMUNITY ACTION PROGRAM ASSOCIATION (WISCAP), JUNE 27, 2000.

WISCAP supports the general nature of chapter Adm 45 as proposed and particularly the flexibility inherent in that language. WISCAP believes that because the public benefits program will forge new ground and methods in the delivery of services, it is critical that the rules not be too prescriptive as to inhibit the full level of creativity, which will be necessary in order to make the program a success.

PROGRAM OPERATIONS MANUAL

WISCONSIN ENERGY ASSISTANCE PROGRAM

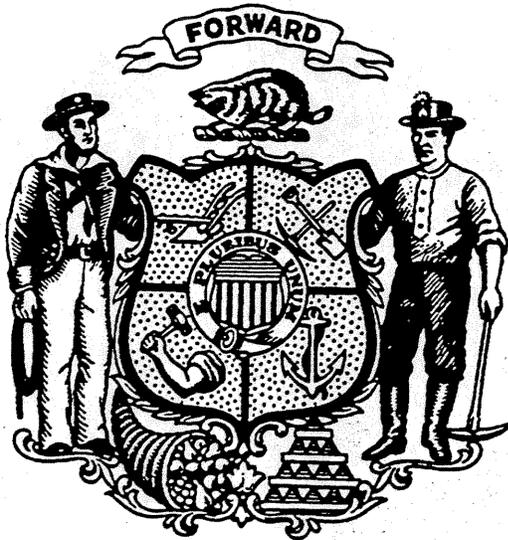


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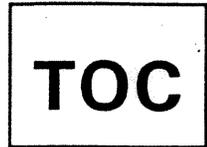
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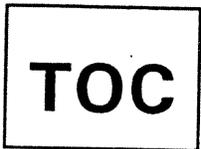
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