

# Emergency Rule ch. ATCP 96 Relating to Milk Producer Security.

*in Hearings  
October  
much -  
→ How many  
Producers  
put into program*

The Department of Agriculture, Trade, and Consumer Protection requests an extension of this emergency rule by 60 days.



State of Wisconsin  
Scott McCallum, Governor

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**Department of Agriculture, Trade and Consumer Protection**  
James E. Harsdorf, Secretary

August 16, 2002

The Honorable Judy Robson, Co-Chair  
Joint Committee for  
the Review of Administrative Rules  
15 South -- State Capitol  
PO Box 7882  
Madison, WI 53707-7882

The Honorable Glenn Grothman, Co-Chair  
Joint Committee for  
the Review of Administrative Rules  
15 North -- State Capitol  
PO Box 8952  
Madison, WI 53708-8952

Dear Senator Robson and Representative Grothman:

**Re: Emergency Rule Extension – Milk Producer Security**

The Department of Agriculture, Trade and Consumer Protection asks the Joint Committee for the Review of Administrative Rules (JCRAR) to extend the above emergency rule, which is scheduled to expire on September 27, 2002. The department asks JCRAR to extend the emergency rule for 60 days, until November 26, 2002.

This emergency rule implements Wisconsin's new agricultural producer security law (ch. 126, Stats.) as it applies to milk contractors. The new law is designed to protect milk producers against catastrophic financial defaults by milk contractors who procure producer milk in this state. ~~The Legislature enacted the new law in 2001 Wis. Act 16.~~

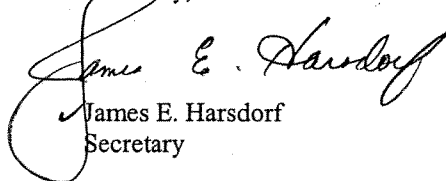
We are enclosing copies of the emergency rule, fiscal estimate and hearing notice. The emergency rule includes a *Finding of Emergency* that explains the need for this rule. The department has started "permanent" rulemaking proceedings, but will not be able to complete those proceedings before the emergency rule expires. The department is therefore asking JCRAR to extend the emergency rule.

The department held a public hearing on the emergency rule on May 16, 2002. A total of 6 persons attended, but there were no verbal comments on the rule. The department received one written comment asking the department to revise the wording of a required "notice to producer" statement that milk contractors must make under the rule.

The department will hold hearings on the "permanent" rule in October. We plan to submit a final draft rule for DATCP Board approval in January, 2003. If the DATCP Board approves the final draft rule, we will refer it to the Legislature for review. Because of the time required for legislative review, promulgation and publication, the department will need to request a further JCRAR extension before this extension expires.

The department will have staff available to answer questions at the JCRAR meeting on this matter.

Sincerely,

  
James E. Harsdorf  
Secretary

Enclosures

*Wisconsin Food and Agricultural Products - \$40 Billion for Wisconsin's Economy*

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State Of Wisconsin  
Department Of Agriculture, Trade And Consumer Protection

**NOTICE OF HEARING**

**Emergency Rule Related to Milk Producer Security**

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces it will hold a public hearing on an emergency rule relating to milk producer security. The department invites the public to attend and comment on the emergency rule. Following the public hearing, the hearing record will remain open until June 16, 2002 to receive additional written comments.

You may obtain a free copy of this emergency rule by contacting Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-4928. Copies will also be available at the hearing.

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by May 9, 2002 either by writing to Kevin LeRoy, Division of Trade and Consumer Protection, PO Box 8911, Madison, WI 53708-8911 (telephone 608-224-4928) or by calling the Department TDD at 224-5058

The hearing is scheduled at:

Thursday, May 16, 1:30 p.m.

Wisconsin Department of Agriculture, Trade and Consumer Protection

Board Room

2811 Agriculture Drive

Madison, WI 53718

Handicapped accessible

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**Analysis Prepared by the Department of Agriculture,  
Trade and Consumer Protection**

Statutory Authority: ss. 93.07(1), 126.51, 126.81(1) and (2), and 227.24,  
Stats.  
Statutes Interpreted: ch.126, Stats.

This emergency rule implements Wisconsin's new agricultural producer security law (ch. 126, Stats.), as it applies to milk contractors. The new law is designed to protect milk

producers against catastrophic financial defaults by milk contractors who procure producer milk in this state. The Legislature enacted the new law in 2001 Wis. Act 16.

The new law applies to milk contractors, including dairy plant operators, producer agents and other milk handlers. Among other things, the new law creates an agricultural producer security fund, financed by milk contractor fees. The Department of Agriculture, Trade and Consumer Protection (DATCP) administers this law. The law takes effect, for milk contractors, on May 1, 2002.

This emergency rule:

- Clarifies the treatment of dairy plant operators who provide *custom processing* services for milk producers, without marketing or taking title to milk or processed dairy products.
- Clarifies the treatment of *producer agents* who market milk and collect milk payments on behalf of producers, without taking title to the milk.
- Clarifies the treatment of persons who market only *processed dairy products* for producers, without procuring, marketing or processing any *raw producer milk*.
- Clarifies the method by which milk contractors calculate and report milk payment obligations, for the purpose of calculating fund assessments and security requirements.
- Requires milk contractors to disclose their security and fund contribution status to producers.

### **Background**

Under the agricultural producer security law, a milk contractor who procures producer milk in this state must be licensed by DATCP. To be licensed, a contractor must do one of the following:

- Contribute to the agricultural producer security fund ("fund"). If a contributing milk contractor defaults on payments to producers, the fund may partially compensate those producers. *Producer agents* (who market milk and collect milk payments for producers *without taking title to the milk*) may have lower fund participation requirements than other milk contractors. If a producer agent defaults, the fund may also make smaller payments to producers.
- File security with DATCP, to secure a portion of the contractor's milk payment obligations to producers. *Producer agents* may file a smaller amount of security than other milk contractors, so there may be less security if a producer agent defaults.

- File financial statements with DATCP, showing that the milk contractor meets minimum financial standards. If a milk contractor is licensed on the basis of the contractor's financial statement, the contractor is not required to contribute to the fund or file security with DATCP. The fund will not pay producers if the contractor defaults, nor will DATCP have any security to pay producers.

### **Custom Processing for Milk Producers**

This emergency rule clarifies that ch. 126, Stats., does not apply to a dairy plant operator who takes temporary custody of producer milk for the sole purpose of providing *custom processing* services to milk producers, provided that all the following apply:

- The producers retain title to the milk and to the processed dairy products made from that milk.
- The operator does not market the milk or processed dairy products, but promptly delivers the processed dairy products to the producers or their agent for consumption or marketing.
- The operator does not commingle producer-owned milk or dairy products with other milk or dairy products.
- The operator provides the custom processing services under a written contract with each producer or the producer's agent. The contract must clearly and conspicuously disclose that:
  - The producer retains title to the milk and dairy products.
  - The producer's milk shipments are not secured under ch. 126, Stats.

### **Producer Agents**

This emergency rule clarifies that a milk contractor does not qualify as a *producer agent*, for purposes of ch. 126, Stats., unless all the following apply:

- The milk contractor procures producer milk in this state solely as the agent of the milk producers.
- The milk contractor does not take title to the producer milk, or to any dairy products made from the producer milk.
- The milk contractor markets the producer milk under a written contract with each milk producer. The contract must clearly and conspicuously disclose all the following:
  - That the milk contractor does not take title to the producer's milk, or any dairy products made from that milk.

- That the milk contractor receives payments on behalf of the producer, and holds them in trust for the producer.
  - The terms and conditions of payment to the producer.
  - The procedure by which the milk contractor will receive payment on behalf of the producer and make payments to the producer, including any trust fund arrangement.
  - The milk contractor's compensation for serving as the producer's agent, and the method by which the milk contractor will receive that compensation from the milk producer.
  - A milk security disclosure statement (see below).
- The milk contractor does not process, as a producer agent, more than 5 million pounds of producer milk in any month.
  - The milk contractor gives, to each recipient of producer milk marketed by the contractor, a written invoice stating that the milk is producer milk not owned by the milk contractor.
  - The milk contractor files a monthly report with DATCP. The milk contractor must file the report on or before the 25<sup>th</sup> day of the month. The report must include all the following:
    - The name and address of each person to whom the milk contractor marketed, in the preceding month, producer milk procured in this state.
    - The total pounds of producer milk that the milk contractor marketed to each person in the preceding month.
    - The milk contractor's total milk payment obligation to milk producers for producer milk that the contractor marketed in the preceding month.

### **Persons Marketing Processed Dairy Products for Milk Producers**

This emergency rule clarifies that ch. 126, Stats., does not apply to a person who markets only *processed dairy products* for milk producers, provided that the person does not procure, market or process any *raw producer milk*.

### **Milk Payment Report by License Applicant**

Under the new law, an applicant for an annual milk contractor license must report (1) the applicant's total annual payment obligation to milk producers, and (2) the largest obligation incurred at any time during the applicant's last fiscal year. The reported amounts are used to determine fund assessments and security requirements, if any. This rule clarifies that the applicant must report (1) the total amount paid for milk procured during the applicant's last fiscal year, and (2) the largest amount paid for milk procured in any single month during the last fiscal year.

## Milk Security Disclosure Statement

This emergency rule requires milk contractors to make milk security disclosures to milk producers, pursuant to s. 126.81(4), Stats., so that producers understand the extent to which milk payments are backed by the agricultural producer security program. The milk contractor must give the disclosure when the milk contractor first procures milk from the producer, and again in June of each year. The disclosure must consist of one of the following written statements:

- The following statement if the milk contractor contributes to the fund (and is not a *producer agent* who also files security):

### IMPORTANT NOTICE

*[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer Security Fund. This fund helps ensure that milk producers will be paid for the milk they ship to contributing contractors. If a contributing contractor fails to pay a producer, the fund may pay up to 80% of the first \$60,000 of the producer's unpaid milk payment claim, and up to 75% of any additional unpaid milk payroll claim.

- The following statement if the milk contractor is required to file security with DATCP and is not a *producer agent*:

### IMPORTANT NOTICE

*[Name of milk contractor]* does not participate in Wisconsin's Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our milk payment obligations to milk producers. The security equals at least 75% of the largest amount that we owed producers at any time during our last completed fiscal year. The security is in the following form(s): *[specify forms of security]*.

- The following statement if the milk contractor does not contribute to the fund or file security with DATCP, but is licensed solely on the basis of the contractor's financial statement:

### IMPORTANT NOTICE

*[Name of milk contractor]* does not participate in Wisconsin's Agricultural Producer Security Fund, and has not filed security with the State of Wisconsin to secure payments to milk producers. Our financial statement shows positive equity, a current ratio of at least 1.25 to 1.0, and a debt-to-equity ratio of no more than 2.0 to 1.0.

- The following statement if the milk contractor is a *producer agent* who does not contribute to the fund and is required to file security with DATCP:

**IMPORTANT NOTICE**

*[Name of milk contractor]* does not participate in Wisconsin's Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our milk payment obligations to milk producers. The security equals 15% of the largest amount that we owed to producers at any time during our last completed fiscal year. The security is in the following form(s): *[specify forms of security]*.

- The following statement if the milk contractor is a *producer agent* who contributes to the fund and files security with DATCP:

**IMPORTANT NOTICE**

*[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer Security Fund as a *producer agent*. If we fail to pay a producer, the fund may pay up to 15% of the producer's allowed claim.

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**Fiscal Estimate**

The department does not expect this emergency rule to have any material fiscal effect.

**Regulatory Flexibility Analysis**

The department will prepare and publish its proposed regulatory flexibility analysis permanent rule to create ch. ATCP 96, Wis. Adm. Code.

Dated this 15<sup>th</sup> day of April, 2002

State of Wisconsin  
Department of Agriculture, Trade and Consumer  
Protection

By Leslie F. Harsdorf  
James E. Harsdorf  
Secretary



STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION

EMERGENCY RULE

- 1 The state of Wisconsin department of agriculture, trade and consumer protection hereby  
2 adopts the following emergency rule to create chapter ATCP 96 relating to milk producer  
3 security.

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**Analysis Prepared by the Department of Agriculture,  
Trade and Consumer Protection**

Statutory Authority: ss. 93.07(1), 126.51, 126.81(1) and (2), and 227.24,  
Stats.  
Statutes Interpreted: ch.126, Stats.

This emergency rule implements Wisconsin's new agricultural producer security law (ch. 126, Stats.), as it applies to milk contractors. The new law is designed to protect milk producers against catastrophic financial defaults by milk contractors who procure producer milk in this state. The Legislature enacted the new law in 2001 Wis. Act 16.

The new law applies to milk contractors, including dairy plant operators, producer agents and other milk handlers. Among other things, the new law creates an agricultural producer security fund, financed by milk contractor fees. The Department of Agriculture, Trade and Consumer Protection (DATCP) administers this law. The law takes effect, for milk contractors, on May 1, 2002.

This emergency rule:

- Clarifies the treatment of dairy plant operators who provide *custom processing* services for milk producers, without marketing or taking title to milk or processed dairy products.
- Clarifies the treatment of *producer agents* who market milk and collect milk payments on behalf of producers, without taking title to the milk.

- Clarifies the treatment of persons who market only *processed dairy products* for producers, without procuring, marketing or processing any *raw producer milk*.
- Clarifies the method by which milk contractors calculate and report milk payment obligations, for the purpose of calculating fund assessments and security requirements.
- Requires milk contractors to disclose their security and fund contribution status to producers.

### **Background**

Under the agricultural producer security law, a milk contractor who procures producer milk in this state must be licensed by DATCP. To be licensed, a contractor must do one of the following:

- Contribute to the agricultural producer security fund (“fund”). If a contributing milk contractor defaults on payments to producers, the fund may partially compensate those producers. *Producer agents* (who market milk and collect milk payments for producers *without taking title to the milk*) may have lower fund participation requirements than other milk contractors. If a producer agent defaults, the fund may also make smaller payments to producers.
- File security with DATCP, to secure a portion of the contractor’s milk payment obligations to producers. *Producer agents* may file a smaller amount of security than other milk contractors, so there may be less security if a producer agent defaults.
- File financial statements with DATCP, showing that the milk contractor meets minimum financial standards. If a milk contractor is licensed on the basis of the contractor’s financial statement, the contractor is not required to contribute to the fund or file security with DATCP. The fund will not pay producers if the contractor defaults, nor will DATCP have any security to pay producers.

### **Custom Processing for Milk Producers**

This emergency rule clarifies that ch. 126, Stats., does not apply to a dairy plant operator who takes temporary custody of producer milk for the sole purpose of providing *custom processing services* to milk producers, provided that all the following apply:

- The producers retain title to the milk and to the processed dairy products made from that milk.
- The operator does not market the milk or processed dairy products, but promptly delivers the processed dairy products to the producers or their agent for consumption or marketing.

- The operator does not commingle producer-owned milk or dairy products with other milk or dairy products.
- The operator provides the custom processing services under a written contract with each producer or the producer's agent. The contract must clearly and conspicuously disclose that:
  - The producer retains title to the milk and dairy products.
  - The producer's milk shipments are not secured under ch. 126, Stats.

### **Producer Agents**

This emergency rule clarifies that a milk contractor does not qualify as a *producer agent*, for purposes of ch. 126, Stats., unless all the following apply:

- The milk contractor procures producer milk in this state solely as the agent of the milk producers.
- The milk contractor does not take title to the producer milk, or to any dairy products made from the producer milk.
- The milk contractor markets the producer milk under a written contract with each milk producer. The contract must clearly and conspicuously disclose all the following:
  - That the milk contractor does not take title to the producer's milk, or any dairy products made from that milk.
  - That the milk contractor receives payments on behalf of the producer, and holds them in trust for the producer.
  - The terms and conditions of payment to the producer.
  - The procedure by which the milk contractor will receive payment on behalf of the producer and make payments to the producer, including any trust fund arrangement.
  - The milk contractor's compensation for serving as the producer's agent, and the method by which the milk contractor will receive that compensation from the milk producer.
  - A milk security disclosure statement (see below).
- The milk contractor does not process, as a producer agent, more than 5 million pounds of producer milk in any month.
- The milk contractor gives, to each recipient of producer milk marketed by the contractor, a written invoice stating that the milk is producer milk not owned by the milk contractor.

- The milk contractor files a monthly report with DATCP. The milk contractor must file the report on or before the 25<sup>th</sup> day of the month. The report must include all the following:
  - The name and address of each person to whom the milk contractor marketed, in the preceding month, producer milk procured in this state.
  - The total pounds of producer milk that the milk contractor marketed to each person in the preceding month.
  - The milk contractor's total milk payment obligation to milk producers for producer milk that the contractor marketed in the preceding month.

### **Persons Marketing Processed Dairy Products for Milk Producers**

This emergency rule clarifies that ch. 126, Stats., does not apply to a person who markets only *processed dairy products* for milk producers, provided that the person does not procure, market or process any *raw producer milk*.

### **Milk Payment Report by License Applicant**

Under the new law, an applicant for an annual milk contractor license must report (1) the applicant's total annual payment obligation to milk producers, and (2) the largest obligation incurred at any time during the applicant's last fiscal year. The reported amounts are used to determine fund assessments and security requirements, if any. This rule clarifies that the applicant must report (1) the total amount paid for milk procured during the applicant's last fiscal year, and (2) the largest amount paid for milk procured in any single month during the last fiscal year.

### **Milk Security Disclosure Statement**

This emergency rule requires milk contractors to make milk security disclosures to milk producers, pursuant to s. 126.81(4), Stats., so that producers understand the extent to which milk payments are backed by the agricultural producer security program. The milk contractor must give the disclosure when the milk contractor first procures milk from the producer, and again in June of each year. The disclosure must consist of one of the following written statements:

- The following statement if the milk contractor contributes to the fund (and is not a *producer agent* who also files security):

#### **IMPORTANT NOTICE**

***[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer Security Fund. This fund helps ensure that milk producers will be paid for the milk they ship to contributing contractors. If a contributing contractor fails to pay a producer, the fund may pay up to 80% of the first \$60,000 of the producer's unpaid milk payment claim, and up to 75% of any additional unpaid milk payroll claim.**

- The following statement if the milk contractor is required to file security with DATCP and is not a *producer agent*:

**IMPORTANT NOTICE**

**[Name of milk contractor] does not participate in Wisconsin's Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our milk payment obligations to milk producers. The security equals at least 75% of the largest amount that we owed producers at any time during our last completed fiscal year. The security is in the following form(s): [specify forms of security].**

- The following statement if the milk contractor does not contribute to the fund or file security with DATCP, but is licensed solely on the basis of the contractor's financial statement:

**IMPORTANT NOTICE**

**[Name of milk contractor] does not participate in Wisconsin's Agricultural Producer Security Fund, and has not filed security with the State of Wisconsin to secure payments to milk producers. Our financial statement shows positive equity, a current ratio of at least 1.25 to 1.0, and a debt-to-equity ratio of no more than 2.0 to 1.0.**

- The following statement if the milk contractor is a *producer agent* who does not contribute to the fund and is required to file security with DATCP:

**IMPORTANT NOTICE**

**[Name of milk contractor] does not participate in Wisconsin's Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our milk payment obligations to milk producers. The security equals 15% of the largest amount that we owed to producers at any time during our last completed fiscal year. The security is in the following form(s): [specify forms of security].**

- The following statement if the milk contractor is a *producer agent* who contributes to the fund and files security with DATCP:

**IMPORTANT NOTICE**

**[Name of milk contractor] contributes to Wisconsin's Agricultural Producer Security Fund as a *producer agent*. If we fail to pay a producer, the fund may pay up to 15% of the producer's allowed claim.**

## FINDING OF EMERGENCY

1           (1) The Legislature, in 2001 Wis. Act 16, repealed and recreated Wisconsin's  
2 agricultural producer security program. The new program is codified in ch. 126, Stats.  
3 (the "new law"). The new law takes effect, for milk contractors, on May 1, 2002. The  
4 new law is intended to protect milk producers against catastrophic financial defaults by  
5 milk contractors.

6           (2) The new law applies to milk contractors, including dairy plant operators,  
7 producer agents and other milk handlers, who procure producer milk in this state. Under  
8 the new law, milk contractors must be licensed by the Wisconsin department of  
9 agriculture, trade and consumer protection (DATCP). Milk contractors must pay license  
10 fees and do one or more of the following:

11           (a) Contribute to Wisconsin's agricultural producer security fund, to help secure  
12 milk payments to milk producers.

13           (b) File security with DATCP.

14           (c) File financial statements with DATCP, showing that the contractor meets  
15 minimum financial standards specified in ch. 126, Stats.

16           (3) The new law regulates *producer agents* (who market milk and collect  
17 payment for milk producers, without taking title to the milk), but treats them differently  
18 than other milk contractors. *Producer agents* may have lower fund participation  
19 requirements, and may file smaller amounts of security, than other milk contractors. The  
20 program may provide correspondingly less compensation to producers if a *producer*  
21 *agent* defaults.

1 (4) It is important to clarify the following matters before the new law takes effect  
2 for milk contractors on May 1, 2002:

3 (a) The treatment of dairy plant operators who provide custom processing  
4 services to milk producers, without marketing or taking title to milk or dairy products.

5 (b) The treatment of *producer agents*. Under s. 126.51, Stats., DATCP must  
6 adopt rules for milk contractors who wish to qualify as *producer agents* under the new  
7 law.

8 (c) The treatment of persons who market only *processed dairy products* for milk  
9 producers, without procuring, marketing or processing raw producer milk.

10 (d) The method by which milk contractors calculate and report milk payment  
11 obligations, for the purpose of calculating fund assessments and security requirements  
12 under the new law.

13 (5) Under s. 126.81(4), Stats., DATCP may require milk contractors to disclose  
14 their security and fund contribution status to milk producers. It is important for milk  
15 contractors to begin making these disclosures soon after the new law takes effect, so that  
16 producers can evaluate the financial risk associated with milk procurement contracts.  
17 Disclosures are important, because not all milk contractors are required to participate in  
18 the agricultural security fund or file security with DATCP.

19 (6) It is not possible, by normal rulemaking procedures, to adopt these essential  
20 clarifications and disclosure requirements by May 1, 2002. DATCP must, therefore,  
21 adopt them by emergency rule. This emergency rule is needed to implement the new  
22 law, to protect the financial security of milk producers, to preserve fair competition in the  
23 dairy industry, and to avoid unnecessary confusion and expense for dairy businesses.

1 **EMERGENCY RULE**

2 SECTION 1. Chapter ATCP 96 is created to read:

3 **CHAPTER ATCP 96**

4 **AGRICULTURAL PRODUCER SECURITY**

5 **ATCP 96.01 Definitions.** In this chapter:

6 (1) "Contributing milk contractor" has the meaning given in s. 126.40(1), Stats.

7 (2) "Dairy plant operator" has the meaning given in s. 126.40(5), Stats.

8 (3) "Milk contractor" has the meaning given in s. 126.40(8), Stats.

9 (4) "Milk producer" has the meaning given in s. 126.40(10), Stats.

10 (5) "Procure producer milk in this state" has the meaning given in s. 126.40(12),  
11 Stats.

12 (6) "Producer agent" has the meaning given in s. 126.40(13), Stats.

13 (7) "Producer milk" has the meaning given in s. 126.40(14), Stats. "Producer  
14 milk" includes producer-owned dairy products that a producer agent manufactures from  
15 raw producer milk.

16 **ATCP 96.02 Custom processing services to milk producers.** Chapter 126,  
17 Stats., does not apply to a dairy plant operator who takes temporary custody of producer  
18 milk solely to process it for the milk producer, provided that all the following apply:

19 (1) The producer retains title to all of the milk and all of the processed dairy  
20 products made from that milk.

21 (2) The operator does not market the milk or processed dairy products, but  
22 promptly returns the processed dairy products to the producer or the producer's agent for  
23 consumption or marketing.



1           (3) The operator does not commingle producer-owned milk or dairy products  
2 with other milk or dairy products.

3           (4) The operator provides the processing services under a written contract with  
4 the producer or the producer's agent. The contract shall clearly and conspicuously  
5 disclose all the following:

6           (a) That the producer retains title to all the milk shipped for processing, and all  
7 the processed dairy products made from that milk.

8           (b) That the producer's milk shipments to the operator are not secured under ch.  
9 126, Stats.

10          (5) The operator keeps a copy of the contract under sub. (4) for at least 3 years  
11 after the contract ends, and makes it available to the department for inspection and  
12 copying upon request.

13          **ATCP 96.03 Producer agents. (1) QUALIFYING AS A PRODUCER AGENT.** A milk  
14 contractor does not qualify as a producer agent, for purposes of ch. 126, Stats., unless all  
15 the following apply:

16          (a) The milk contractor procures producer milk in this state solely as the agent of  
17 the milk producers.

18          (b) The milk contractor does not take title to the producer milk, or to any  
19 processed dairy products made from the producer milk.

20          (c) The milk contractor markets the producer milk under a written contract with  
21 each milk producer. The contract shall comply with sub. (2).

22          (d) The milk contractor does not process, as a producer agent, more than 5  
23 million pounds of producer milk in any month.

1 (e) The milk contractor gives, to each recipient of producer milk marketed by the  
2 milk contractor, a written invoice stating that the milk is producer milk not owned by the  
3 milk contractor.

4 (f) The milk contractor files a monthly producer agent report with the  
5 department, as provided under sub. (3).

6 (2) CONTRACT WITH MILK PRODUCER. The contract under sub. (1)(c) shall clearly  
7 specify the terms under which the milk contractor receives, markets and accepts payment  
8 for milk on behalf of the producer. The contract shall clearly and conspicuously disclose  
9 all the following:

10 (a) That the milk contractor does not take title to the producer's milk, or any  
11 dairy products made from that milk.

12 (b) That the milk contractor receives payments on behalf of the producer, and  
13 holds them in trust for the producer.

14 (c) The terms and conditions of payment to the producer.

15 (d) The procedure by which the milk contractor will receive payment on behalf of  
16 the producer and make payments to the producer, including any trust fund arrangement.

17 (e) The milk contractor's compensation for serving as the producer's agent, and  
18 the method by which the milk contractor will receive that compensation from the  
19 producer.

20 (f) The appropriate milk security disclosure statement under s. ATCP 96.05.

21 (3) MONTHLY REPORT. A milk contractor who files a monthly producer agent  
22 report under sub. (1)(f) shall file the report on or before the 25<sup>th</sup> day of the month. The  
23 report shall include all the following:

1 (a) The name and address of each person to whom the milk contractor marketed,  
2 in the preceding month, producer milk procured in this state.

3 (b) The total pounds of producer milk that the milk contractor marketed to each  
4 person under par. (a) in the preceding month.

5 (c) The milk contractor's total gross payments to milk producers for producer  
6 milk that the contractor marketed under par. (a) in the preceding month.

7 **ATCP 96.04 Persons marketing processed dairy products for milk**  
8 **producers.** Chapter 126, Stats., does not apply to a person who markets only processed  
9 dairy products for milk producers, provided that the person does not procure, market or  
10 process raw producer milk.

11 **ATCP 96.05 Milk security disclosure statement.** A milk contractor shall give  
12 a milk security disclosure statement to each milk producer and producer agent from  
13 whom the milk contractor procures producer milk in this state. The milk contractor shall  
14 give the disclosure statement when the milk contractor first procures producer milk from  
15 that producer or producer agent, and again in June of each year. The milk contractor  
16 shall give the disclosure statement in writing. The disclosure statement shall be clear and  
17 conspicuous, and shall be set apart from any other writing. The disclosure statement shall  
18 consist of one of the following verbatim statements, as applicable:

19 (1) The following statement if the milk contractor is a contributing milk  
20 contractor, other than a producer agent who is also required to file security under s.  
21 126:47(3)(c), Stats.:

1 **IMPORTANT NOTICE**

2 ***[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer**  
3 **Security Fund. This fund helps ensure that milk producers will be paid for**  
4 **the milk they ship to contributing contractors. If a contributing contractor**  
5 **fails to pay a producer, the fund may pay up to 80% of the first \$60,000 of**  
6 **the producer's unpaid milk payment claim, and up to 75% of any additional**  
7 **unpaid milk payroll claim.**

8  
9 (2) The following statement if the milk contractor has filed security under s.  
10 126.47, Stats., but is not a producer agent filing security under s. 126.47(3)(b) or (c),  
11 Stats.:

12 **IMPORTANT NOTICE**

13 ***[Name of milk contractor]* does not participate in Wisconsin's Agricultural**  
14 **Producer Security Fund. We have filed security with the State of Wisconsin**  
15 **to cover part, but not all, of our milk payment obligations to milk producers.**  
16 **The security equals at least 75% of the largest amount that we owed**  
17 **producers at any time during our last completed fiscal year. The security is**  
18 **in the following form(s): *[specify forms of security]*.**

19  
20 (3) The following statement if the milk contractor is not a contributing milk  
21 contractor, and has not filed security, but has filed financial statements that meet the  
22 standards under s. 126.45(1)(b), Stats.:

23 **IMPORTANT NOTICE**

24 ***[Name of milk contractor]* does not participate in Wisconsin's Agricultural**  
25 **Producer Security Fund, and has not filed security with the State of**  
26 **Wisconsin to secure payments to milk producers. Our financial statement**  
27 **shows positive equity, a current ratio of at least 1.25 to 1.0, and a debt-to-**  
28 **equity ratio of no more than 2.0 to 1.0.**

29  
30 (4) The following statement if the milk contractor is a producer agent who is  
31 required to file security under s. 126.47, Stats., and does not contribute to the fund:

32 ***[Name of milk contractor]* does not participate in Wisconsin's Agricultural**  
33 **Producer Security Fund. We have filed security with the State of Wisconsin**  
34 **to cover part, but not all, of our milk payment obligations to milk producers.**  
35 **The security equals 15% of the largest amount that we owed to producers at**

1 any time during our last completed fiscal year. The security is in the  
2 following form(s): *[specify forms of security]*.

3  
4 **NOTE:** The 15% security amount applies during the term of this temporary  
5 emergency rule. The required security amount increases in the license  
6 year beginning May 1, 2003 and in subsequent license years. See s.  
7 126.47(3)(b), Stats.

8  
9 (5) The following statement if the milk contractor contributes to the fund as a  
10 producer agent, and files security according to s. 126.47(3)(c), Stats.:

11 **IMPORTANT NOTICE**

***[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer  
Security Fund as a *producer agent*. If we fail to pay a producer, the fund  
may pay up to 15% of the producer's allowed claim.**

12  
13 **NOTE:** The 15% payment amount applies during the term of this temporary  
14 emergency rule. The payment amount increases to 20% for producer  
15 agent defaults occurring after April 30, 2004. Beginning May 1, 2007,  
16 producer agents are treated like other milk contractors. See s.  
17 126.71(1)(a), (d) and (e).

18  
19 **ATCP 96.06 Milk producer payment report by license applicant.** (a) An  
20 applicant for an annual milk contractor license shall include, as part of the license  
21 application, the sworn and notarized statement required under s. 126.41(6), Stats.

22 (b) The statement under par. (a) shall report, under s. 126.41(6)(a), Stats., the  
23 gross amount that the applicant paid for producer milk procured in this state during the  
24 applicant's last completed fiscal year. If the applicant has not yet operated as a milk  
25 contractor, the applicant shall report the estimated gross amount that the applicant will  
26 pay for milk procured in the applicant's first completed fiscal year.

27 (c) The statement under par. (a) shall report, under s. 126.41(6)(b), Stats., the  
28 largest gross amount that the applicant paid for producer milk procured in this state in  
29 any single month during the applicant's last completed fiscal year.

1           **EFFECTIVE DATE:** This emergency rule take effects effect upon publication in the  
2 official state newspaper, and remains in effect for 150 days. The department may seek to  
3 extend this emergency rule as provided in s. 227.24, Stats.

Dated this 15 day of April, 07.

**STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION**

✓ By James E. Harsdorf  
James E. Harsdorf,  
Secretary

SENATOR JUDITH B. ROBSON  
CO-CHAIR

PO Box 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

PO Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

***Emergency Rule Extension Motion Form***

**Date:** May 16, 2002

**Location:** 201 Southeast

Moved by Grothman, Seconded by Robson

**THAT**, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective date of Emergency Rule DWD 290 by 30 days, at the request of the Department of Workforce Development.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator WELCH	✓ *		
5. Senator COWLES	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓ *		
8. Representative GUNDERSON	✓		
9. Representative TURNER	✓		
10. Representative HEBL	✓		
Totals			

\* voted by  
Polling

Motion Carried

Motion Failed

Scott McCallum  
Governor

Jennifer Reinert  
Secretary



State of Wisconsin

Department of Workforce Development

---

OFFICE OF THE SECRETARY

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

May 3, 2002

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

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

Dear Senator Robson and Representative Grothman:

The Department of Workforce Development has an emergency rule in effect that will expire before the permanent rule is effective unless the emergency rule is extended. Pursuant to s. 227.24(2), Stats., the department requests a 30-day extension of the emergency rule affecting ss. DWD 290.15, 290.155(1), and 293, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

The state prevailing wage laws require that when a state agency or local governmental unit contracts for the construction of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Under current law the state prevailing wage rate laws do not apply to any single-trade public works project for which the estimated cost is below \$35,000, and do not apply to any multi-trade public works project for which the estimated cost is below \$172,000. The department is required to adjust the dollar amounts of the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. The threshold adjustment is based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication. The rule adjusts the thresholds from \$35,000 to \$36,000 for single-trade projects and from \$172,000 to \$175,000 for multi-trade projects based on a 1.7% increase in the construction cost index between December 2000 and December 2001.

Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing of materials for a public work. Section 779.14(1s), Stats., requires the department to adjust the thresholds for various requirements in proportion to any change in construction costs since the statute was effective or the last adjustment. This is the first adjustment since the statute was effective in June 1998. The thresholds are adjusted to reflect a 8.7% increase in the construction cost index from June 1998 to December 2001. These adjustments are also based on changes in the construction costs index as published in the *Engineering News-Record* and are rounded to the nearest thousand.



The emergency rule was effective January 1, 2002, and will expire May 31, 2002. The proposed permanent rule (CR 02-11) is expected to be effective July 1, 2002. A 30-day extension of the emergency rule is requested to prevent a lapse in the department's authority during the period before the permanent rule is effective. The threshold adjustments are adjusted by emergency rule to ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made. The prevailing wage rate threshold adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The thresholds for application of the payment and performance assurance requirements avoid imposing an additional administrative burden on contractors for the same reason.

If you have any questions about the substantive content of these rules, please contact Bob Anderson of the Equal Rights Division at 266-0026.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elaine S. Pridgen".

Elaine S. Pridgen  
DWD Rules Coordinator



**State of Wisconsin  
Department of Workforce Development  
Equal Rights Division**

**EMERGENCY RULE**

**Adjustment of Thresholds for Application of Prevailing Wage Rates and  
Payment and Performance Assurance Requirements**

**DWD 290.15, DWD 290.155(1), and DWD 293**

The Wisconsin Department of Workforce Development amends ss. 290.15 and 290.155(1) and creates chapter DWD 293, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

---

**Finding of Emergency**

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

The Department of Workforce Development is acting under its statutory authority to adjust thresholds for the application of prevailing wage laws on state or local public works projects and the application of payment and performance assurance requirements for a public improvement or public work. The thresholds are adjusted in proportion to any change in the construction cost index since the statutes were effective or the last adjustment.

If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process. The department is proceeding with this emergency rule to adjust the thresholds of the application of the prevailing wage rates to avoid imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The department is proceeding with this emergency rule to adjust the thresholds of the application of the payment and performance assurance requirements in s. 779.14, Stats., to avoid imposing an additional administrative burden on contractors for the same reason. Adjusting the thresholds by

emergency rule will also ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made.

### **Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 66.0903(5), 103.49(3g), 779.14(1s), and 227.11, Stats.

**Statutes interpreted:** Sections 66.0903(5), 103.49(3g), and 779.14, Stats.

**Adjustment of thresholds for application of prevailing wage rates.** The state prevailing wage laws require that when a state agency or local governmental unit contracts for the construction of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Under current law the state prevailing wage rate laws do not apply to any single-trade public works project for which the estimated cost is below \$35,000, and do not apply to any multi-trade public works project for which the estimated cost is below \$172,000.

Pursuant to ss. 66.0903(5) and 103.49(3g), Stats., and s. DWD 290.15, the Department is required to adjust the dollar amounts of the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. The threshold adjustment is based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication. This rule adjusts the thresholds from \$35,000 to \$36,000 for single-trade projects and from \$172,000 to \$175,000 for multi-trade projects based on a 1.7% increase in the construction cost index between December 2000 and December 2001. Section DWD 290.15 is also amended to clarify that the department rounds off the thresholds to the nearest thousand.

**Adjustment of thresholds for payment and performance assurance requirements.** Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing of materials for a public improvement project or public work. Section 779.14(1s), Stats., requires the department to adjust the thresholds for various requirements in proportion to any change in construction costs since the statute was effective or the last adjustment. This is the first adjustment since the statute was effective in June 1998. The thresholds are adjusted to reflect a 8.7% increase in the construction cost index from June 1998 to December 2001. These adjustments are also based on changes in the construction costs index as published in the *Engineering News-Record* and are rounded to the nearest thousand.

**SECTION 1. DWD 290.15 is amended to read:**

**DWD 290.15** Every year, the department shall adjust the minimum estimated project cost of completion figures for both single-trade and multi-trade public works projects on the basis of the change in the construction cost index as published in the engineering news-record. The adjusted minimum estimated project cost of completion figures shall be rounded to the nearest thousand.

**SECTION 2. DWD 290.155(1) is amended to read:**

**DWD 290.155(1)** This chapter does not apply to any single-trade public works project for which the estimated cost of completion is below ~~\$35,000~~ \$36,000, and any multi-trade public works project for which the estimated cost of completion is below ~~\$172,000~~ \$175,000.

**SECTION 3. Chapter DWD 293 is created to read:**

**Chapter DWD 293**

**PAYMENT AND PERFORMANCE ASSURANCE REQUIREMENTS**

**DWD 293.01 Payment and performance assurance requirements.** The department of workforce development shall biennially adjust the contract prices that determine the payment and performance assurance requirements that apply to contracts with state and local governments for the performance of labor or furnishing materials for a public improvement or public work. These contract prices shall be adjusted on the basis of the change in the construction cost index as published in the engineering news-record and will be rounded to the nearest thousand. No adjustment shall be made for a biennium if the adjustment to be made would be less than 5%.

**Note:** The *Engineering News-Record* is a weekly publication of the McGraw-Hill Companies, 1221 Avenue of the Americas, New York, NY 10020. A construction cost index is published in the "Construction Economics" section of each issue.

**DWD 293.02 Indexing of contract thresholds for payment and performance assurance requirements.** (1) STATE CONTRACTS. (a) The payment and performance assurance requirements in s. 779.14(1m)(c)1., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$11,000 but not exceeding \$109,000.

(b) The payment and performance assurance requirements in s. 779.14(1m)(c)2., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$109,000 but not exceeding \$272,000.

(c) The payment and performance assurance requirements in s. 779.14(1m)(c)3., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$272,000.

**(2) LOCAL GOVERNMENT CONTRACTS.** (a) The payment and performance assurance requirements in s. 779.14(1m)(d)1., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$11,000 but not exceeding \$55,000.

(b) The payment and performance assurance requirements in s. 779.14(1m)(d)2., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$55,000 but not exceeding \$109,000.

(c) The payment and performance assurance requirements in s. 779.14(1m)(d)3., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding \$109,000.

**EFFECTIVE DATE.** This rule shall take effect on January 1, 2002, as provided in s. 227.24(1)(d), Stats.

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



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

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 16, 2002

BY INTER-D

Secretary Jennifer Reinert  
Department of Workforce Development  
201 East Washington Avenue  
Madison, Wisconsin

Re: Emergency Rule DWD 290

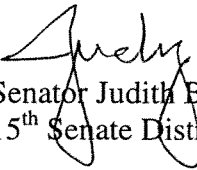
Dear Secretary Reinert:


We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session today. At that meeting, the JCRAR received public testimony regarding Emergency Rule DWD 290, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Based on that testimony, the committee adopted a motion extending the effective period of Emergency Rule Trans DWD 290 for 30 days. The committee approved the motion on a 10 to 0 vote.

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

Sincerely,

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

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

JBR:GG:da

Scott McCallum  
Governor

Jennifer Reinert  
Secretary



State of Wisconsin

Department of Workforce Development

---

OFFICE OF THE SECRETARY

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

May 3, 2002

- COPY -

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

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

Dear Senator Robson and Representative Grothman:

The Department of Workforce Development has an emergency rule in effect that will expire before the permanent rule is effective unless the emergency rule is extended. Pursuant to s. 227.24(2), Stats., the department requests a 30-day extension of the emergency rule affecting ss. DWD 290.15, 290.155(1), and 293, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

The state prevailing wage laws require that when a state agency or local governmental unit contracts for the construction of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Under current law the state prevailing wage rate laws do not apply to any single-trade public works project for which the estimated cost is below \$35,000, and do not apply to any multi-trade public works project for which the estimated cost is below \$172,000. The department is required to adjust the dollar amounts of the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. The threshold adjustment is based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication. The rule adjusts the thresholds from \$35,000 to \$36,000 for single-trade projects and from \$172,000 to \$175,000 for multi-trade projects based on a 1.7% increase in the construction cost index between December 2000 and December 2001.

Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing of materials for a public work. Section 779.14(1s), Stats., requires the department to adjust the thresholds for various requirements in proportion to any change in construction costs since the statute was effective or the last adjustment. This is the first adjustment since the statute was effective in June 1998. The thresholds are adjusted to reflect a 8.7% increase in the construction cost index from June 1998 to December 2001. These adjustments are also based on changes in the construction costs index as published in the *Engineering News-Record* and are rounded to the nearest thousand.

The emergency rule was effective January 1, 2002, and will expire May 31, 2002. The proposed permanent rule (CR 02-11) is expected to be effective July 1, 2002. A 30-day extension of the emergency rule is requested to prevent a lapse in the department's authority during the period before the permanent rule is effective. The threshold adjustments are adjusted by emergency rule to ensure that the adjustments are effective on a date certain that is prior to the time of year that the relevant determinations are generally made. The prevailing wage rate threshold adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. The thresholds for application of the payment and performance assurance requirements avoid imposing an additional administrative burden on contractors for the same reason.

If you have any questions about the substantive content of these rules, please contact Bob Anderson of the Equal Rights Division at 266-0026.

Sincerely,

Elaine S. Pridgen  
DWD Rules Coordinator



SENATOR JUDITH B. ROBSON  
Co-CHAIR

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



REPRESENTATIVE GLENN GROTHMAN  
Co-CHAIR

P.O. BOX 8952  
MADISON, WI 53708-8952  
(608) 264-6486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 16, 2002

By Inter-D

Senator Fred Risser  
Senate President  
Room 220 South

Representative Scott Jensen  
Speaker of the Assembly  
Room 211 West

Re: Emergency Rule Comm 110  
Emergency Rule Phar 1.02  
Emergency Rule PI 35  
Emergency Rule Trans 102.15  
Emergency Rule DWD 290

Dear Senator Risser and Representative Jensen:

This letter is sent pursuant to § 227.24(2)(c), *Stats*. In accordance with the requirements of that statute, we respectfully request that you notify the appropriate standing committees of each house of the legislature of the following actions by the Joint Committee for the Review of Administrative Rules (JCRAR).

JCRAR held a public hearing and executive session today. At that meeting, the JCRAR received public testimony regarding the following emergency rules:

- Emergency Rule Comm 110, relating to brownfields redevelopment grants;
- Emergency Rule Phar 1.02, relating to a pharmacy internship program;
- Emergency Rule PI 35, relating to the Milwaukee Parental Choice Program;
- Emergency Rule Trans 102.15, relating to the issuance of driver's licenses and identification cards; and
- Emergency Rule DWD 290, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

Based on the public testimony at the hearing, the committee adopted a motion extending the effective period of Emergency Rule Comm 110 for 60 days. The committee approved the motion on a 10 to 0 vote.

Based on the public testimony at the hearing, the committee adopted a motion extending effective period of Emergency Rule Phar 1.02 for 60 days. The committee approved the motion on a 10 to 0 vote.

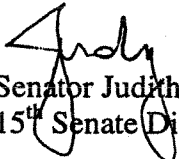
Based on the public testimony at the hearing, the committee adopted a motion extending effective period of Emergency Rule PI 35 for 60 days. The committee approved the motion on a 10 to 0 vote.


Based on the public testimony at the hearing, the committee adopted a motion extending effective period of Emergency Rule Trans 102.15 for 12 days. The committee approved the motion on a 10 to 0 vote.

Based on the public testimony at the hearing, the committee adopted a motion extending effective period of Emergency Rule DWD 290 for 30 days. The committee approved the motion on a 10 to 0 vote.

Thank you for your attention to these matters.

Sincerely,

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

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

JBR:GG:da

SENATOR JUDITH B. ROBSON  
Co-CHAIR  
PO Box 7882  
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(608) 266-2253



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

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

*Attendance Form*

**Date:** May 16, 2002

**Location:** 201 Southeast

Accounting for:

Public Hearing

Executive Session

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator WELCH			✓
5. Senator COWLES	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI			✓
8. Representative GUNDERSON	✓		
9. Representative TURNER	✓		
10. Representative HEBL	✓		
Totals	8		2

David A. Austin  
Committee Clerk

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



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

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

*Attendance Form*

**Date:** May 16, 2002

**Location:** 201 Southeast

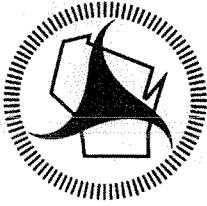
Accounting for:

Public Hearing

Executive Session

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator WELCH			✓
5. Senator COWLES	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI			✓
8. Representative GUNDERSON	✓		
9. Representative TURNER	✓		
10. Representative HEBL	✓		
Totals			

David A. Austin  
Committee Clerk



## Wisconsin Department of Transportation

www.dot.state.wi.us

Scott McCallum  
Governor

Gene E. Kussart  
Secretary

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

Telephone: 608-266-8810  
FAX: 608-267-6734  
E-mail: [ogc.exec@dot.state.wi.us](mailto:ogc.exec@dot.state.wi.us)

**April 5, 2002**

The Honorable Judy Robson  
Senate Chairman  
Joint Committee for Review  
of Administrative Rules  
15 South, State Capitol  
Madison, Wisconsin 53702

The Honorable Glenn Grothman  
Assembly Chairman  
Joint Committee for Review  
of Administrative Rules  
Room 15 North, State Capitol  
Madison, Wisconsin 53702

**RE: EMERGENCY RULE EXTENSION**

Dear Senator Robson and Representative Grothman:

I am writing to request an extension for the Wisconsin Department of Transportation's emergency administrative rule ch. Trans 102, relating to the issuance of driver's licenses and identification cards, pursuant to § 227.24(2)(am), Stats. The information you request is as follows:

Emergency Rule Expiration Date: **May 20, 2002**

Number of Days Extension Requested: **Twelve (12)**

Administrative Rule Number: **TRANS 102**

Relating Clause: **Issuance of Driver's Licenses and Identification Cards**

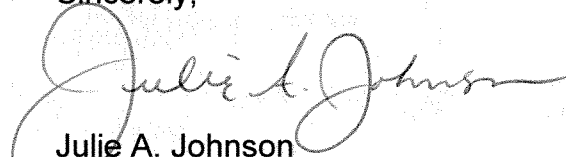
Status of Permanent Rule: **The Final Draft of the permanent administrative rule Trans 102 was submitted for legislative committee review on February 20, 2002, and referred to the Assembly Transportation Committee and to the Senate Insurance, Tourism and Transportation Committee, on February 22 and 25, 2002, respectively. The committee review period expired on**

**March 27, 2002. The Department promulgated the rule on April 4, 2002 and subsequently submitted the rule to the Revisor of Statutes for publication.**

The extension of the emergency rule is necessary due to the lapse between its expiration date and the effective date of the permanent rule which will be June 1, 2002. I am enclosing a copy of the emergency rule.

Please consider this request at your May meeting. A Department representative will attend the meeting. **Please contact me at 267-3703 or e-mail me at [julie.johnson@dot.state.wi.us](mailto:julie.johnson@dot.state.wi.us) to confirm your schedule.** Thank you for your cooperation.

Sincerely,



Julie A. Johnson  
Paralegal

JAJ/dim

Enclosure

cc: The Honorable Fred Risser/President, Wisconsin State Senate  
The Honorable Scott Jensen/Speaker, Wisconsin State Assembly  
Senator Roger Breske  
Representative Jeff Stone  
Gary Poulson  
Mike Goetzman  
Alice Morehouse  
Roger Cross  
Phil Alioto

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The Wisconsin Department of Transportation Adopts an Emergency Rule to amend TRANS 102.15(3)(a)8., Wisconsin Administrative Code, relating to the issuance of driver's licenses and identification cards.

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**ORDER ADOPTING  
EMERGENCY RULE**

**Analysis Prepared by the Wisconsin Department of Transportation**

**STATUTORY AUTHORITY:** s. 343.14(2)(f), Stats.

**STATUTE INTERPRETED:** s. 343.14(2)(f), Stats.

**General Summary of Emergency Rule.** This rule amends s. Trans 102.15(3)(a)8. to require additional proof of identification documents from persons using a "parolee" or "refugee" version of the federal I-94 arrival departure record. The "parolee" or "refugee" version of the federal I-94 document is a standard I-94 document that is hand-stamped to indicate the possessor's parolee or refugee status. The document is not secure identification and can be easily forged.

Under the current regulation, such an I-94 document is accorded the same veracity as proof of identity as a passport or certified birth certificate. Refugees and parolees often leave their countries without passports or other identification documents, making it difficult for them to document their identities to the satisfaction of driver licensing agencies. The Department proposes to require persons having these types of I-94 documents as their sole source of identification to also provide the Department with a letter from their immigration sponsor and a copy of their Reception and Placement Program Assurance Form, which bears a photograph of the person. Applicants who are unable to provide a copy of this form may be issued an ID or driver license, but only after the U.S. Immigration and Naturalization Service verifies their identity, which can take up to 60 days.

These rules are proposed in response to the September 11, 2001, terrorist hijackings in the United States, and are intended to help uncover any possible terrorist attempting to obtain identification documents through the Wisconsin Department of Transportation. The Department expects it will need to make significant revisions to existing s. Trans 102.15, which specifies what documents the Department will accept for identification purposes when issuing driver licenses or identification documents. This rule making is intended to immediately interrupt the possible use of forged federal I-94 documents as identification documents. The Department has no evidence of past improper use of these documents by terrorists.

Officials have confirmed that 15 of the 19 suspected hijackers involved in the September 11, 2001, incidents obtained US visas in Saudi Arabia. Saudi officials have insisted that the men who obtained the visas likely engaged in identity theft, and that there is no way of knowing if they really were Saudi citizens. These men would not have entered the U.S. as "parolees" or "refugees" and this rule making would not have any effect on terrorists attempting to obtain Wisconsin identification documents with Saudi passports or other official entry documents.

On November 21, 2001, the New York Times reported that to support their terrorism, terrorists have committed crimes including skimming money from a charity for Muslim orphans in Albania and robbing an Italian diplomat's home in Jordan. They acquired or forged seals from universities, border guards and the Saudi Arabian Interior Ministry. According to the Times, these extremists used the Muslim pilgrimages to Islamic holy sites in Saudi Arabia as a cover for recruiting new members or passing cash from one member to another. They moved money around the globe to bail members out of jail in Algeria or Canada, **and to finance applications for political asylum and thus implant terrorist cells in Western Europe.** This rule change could interrupt the mechanism for terrorists who have applied for or received asylum in the United States to obtain Wisconsin identification documents.

Accordingly, this rule is proposed as a mechanism to avoid issuing identification documents to any terrorist who has applied for asylum in the United States.

**Initial Fiscal Estimate.** The Department estimates there will be no direct fiscal estimate from this rule.

**Initial Regulatory Flexibility Analysis.** The provisions of this emergency rule have no effect on small businesses.

**Forms.** The emergency rule involves no forms.

**Copies of Emergency Rule and Contact Person.** Copies of this emergency rule are available without cost upon request by writing to Phillip Alioto, Division of Motor Vehicles, Wisconsin Department of Transportation, Room 255, Hill Farms State Office Building, Madison, WI 53707, or by calling (608) 266-0978. Alternate formats of the proposed rule will be provided to individuals at their request. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096.

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### **TEXT OF EMERGENCY RULE**

Under the authority vested in the state of Wisconsin, department of transportation, by s. 343.14(2)(f), Stats., the department of transportation hereby amends ch. Trans 102,



Wisconsin Administrative Code, interpreting s. 343.14(2)(f), Stats., relating to the issuance of driver's licenses and identification cards.

**SECTION 1.** Section Trans 102.15(3)(a)8. is amended to read:

Trans 102.15(3)(a)8. A federal I-94 "parole edition" or "refugees version" arrival-departure record, together with a certification, on the department's form, by the person, of the person's name and date of birth, a copy of a U.S. department of state refugee data center reception and placement program assurance form and a letter from the person's sponsoring agency on its letterhead, supporting the person's application for a Wisconsin ID or driver license and confirming the person's identification. Applicants who are unable to provide a reception and placement program assurance form may be issued a license, but only after their identification has been confirmed by the U.S. immigration and naturalization service;

**(END OF RULE TEXT)**

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**FINDING OF EMERGENCY**


This rule is adopted in response to the September 11, 2001, terrorist hijackings in the United States, and are intended to help uncover any possible terrorist attempting to obtain identification documents through the Wisconsin Department of Transportation. On November 21, 2001, the New York Times reported that to support their terrorism, terrorists finance applications for political asylum and thus implant terrorist cells in Western Europe. This rule change could interrupt terrorists who have applied for or received asylum in the United States and who attempt to obtain Wisconsin identification documents.

Because of the urgency of current government efforts directed at taking steps to interrupt terrorist workings, this order adopting an emergency rule shall take effect as provided below.

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**Effective Date.** This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Signed at Madison, Wisconsin, this 12<sup>th</sup> day of December, 2001.

A handwritten signature in black ink, appearing to read "Terry Mulcahy", written over a horizontal line.

TERRY MULCAHY, P.E.

Secretary

Wisconsin Department of Transportation

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

***Emergency Rule Extension Motion Form***

**Date:** May 16, 2002

**Location:** 201 Southeast

Moved by Cowles, Seconded by Robson

**THAT**, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective date of Emergency Rule Trans 102.15 by 12 days, at the request of the Department of Transportation.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator WELCH	✓*		
5. Senator COWLES	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓*		
8. Representative GUNDERSON	✓		
9. Representative TURNER	✓		
10. Representative HEBL	✓		
Totals			

\* voted by  
 polling

Motion Carried

Motion Failed

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## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 16, 2002

BY INTER-D

Acting Secretary Thomas Carlsen  
Department of Transportation  
4802 Sheboygan Avenue  
Madison, Wisconsin

Re: Emergency Rule Trans 102.15

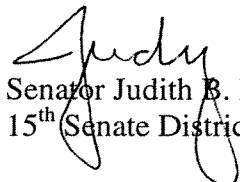
Dear Acting Secretary Carlsen:


We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session today. At that meeting, the JCRAR received public testimony regarding Emergency Rule Trans 102.15, relating to the issuance of driver's licenses and identification cards.

Based on that testimony, the committee adopted a motion extending the effective period of Emergency Rule Trans 102.15 for 12 days. The committee approved the motion on a 10 to 0 vote.

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

Sincerely,

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

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

JBR:GG:da