

PSC 160.05(1)(c) and 160.125(1)

Voice Mail for the Homeless

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter PSC 160

UNIVERSAL SERVICE SUPPORT FUNDING AND PROGRAMS

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PSC 160.01 Scope and purpose. (1) PURPOSE. Chapter PSC 160 is designed to effectuate and implement s. 196.218, Stats., and parts of other sections of the Wisconsin statutes, authorizing the commission to establish a universal service fund and programs to further the goal of providing a basic set of essential telecommunications services and access to advanced service capabilities to all customers of the state.

(2) SCOPE AND EXCEPTION. (a) The requirements of ch. PSC 160 shall be observed by the telecommunications providers subject to the jurisdiction of the commission as indicated in this chapter, except insofar as any exemption may be made by the commission. Except as otherwise expressly provided by law, s. 196.218, Stats., and the requirements of this chapter apply to telecommunications providers certified under s. 196.203 (2), Stats.

(b) Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or services that may be lesser, greater, other or different than those provided in this chapter.

(3) DISPUTES. Disputes not resolved between the affected parties regarding assessment or support amounts or the eligibility to receive or the liability to pay under this chapter shall be referred to the commission for resolution.

(4) ENFORCEMENT. The manner of enforcing ch. PSC 160 is prescribed in ss. 196.218, 196.499 (17) and 196.66, Stats., and includes such other means as provided in statutory sections administered by the commission.

(5) ORDERS. The commission may issue orders it deems necessary to assist in the implementation or interpretation of this chapter. Except for declaratory rulings under s. 227.41, Stats., which require the opportunity for a hearing, and commission determinations not subject to judicial review under ss. 227.52 and 227.53, Stats., orders shall be issued only after notice and an opportunity for comment by interested parties including the universal service fund council.

History: Cr. Register, April, 1996, No. 484, eff. 5-1-96; am. (2) (a) and (5), Register, April, 2000, No. 532, eff. 5-1-00.

PSC 160.02 Definitions. The definitions in s. 196.01, Stats., apply in this chapter. In addition, in this chapter:

(1g) "Calculated charge" means the charge calculated by converting a per call charge into a per minute charge. The conversion to a per minute charge shall be accomplished by dividing the per call charge by the telecommunications provider's average residential call duration. If there are multiple per call charges within

one local calling area, the weighted average shall be used as the per call charge.

(1m) "Contributory provider" means a telecommunications provider that pays monies to the universal service fund.

(2) "Disability" means a physical or sensory impairment that limits or curtails an individual's access to or usage of telecommunications services. "Disability" includes a speech, vision or hearing impairment and motion impairments that limit an individual's ability to handle telecommunications equipment.

(3) "Emergency service numbers" mean 9-1-1 where available and fire, emergency medical services, law enforcement, and poison center emergency numbers where 9-1-1 is not available.

(4g) "Federal high cost program" means any program established by the federal communications commission under 47 CFR 54 subpt. D.

(4m) "Institutions" means:

(a) Not-for-profit schools, which includes each school in a school district as defined by s. 115.01 (3), Stats., private schools as defined by s. 115.001 (3r), Stats., charter schools as defined by s. 118.40, Stats., colleges and universities as defined by s. 36.05 (13), Stats., and technical college districts as defined by s. 38.01 (5), Stats.

(b) Public libraries.

(c) Not-for-profit hospitals.

(5) "Lifeline" means the program that provides reduced monthly service rates for low-income customers.

(6) "Link-Up" means the program that waives service connection charges for low-income customers.

(7) "Local exchange service provider" means any commercial mobile radio service provider that has been designated as an eligible telecommunications carrier under s. PSC 160.13, or a telecommunications utility or any other provider of basic local exchange service or standard business lines and usage.

(8) "Low-income" means a household that receives benefits from one or more of the following programs:

(a) Wisconsin works under ss. 49.141 to 49.161, Stats.

(b) Medical assistance under 42 USC 1395.

(c) Supplemental security income under 42 USC 1381 to 1385c.

(d) Food stamps under 7 USC 2011 to 2029.

(e) The low income household energy assistance program under s. 16.385, Stats.

(f) The Wisconsin homestead tax credit under ss. 71.51 to 71.55, Stats.

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(4) **PUBLIC NOTIFICATION AND EDUCATION.** A local exchange service provider shall make all reasonable efforts to inform customers within its service areas of the availability of, and eligibility requirements for cost-free toll blocking services, 900 and 976 number blocking services and extended community calling blocking services. The local exchange service provider shall also make reasonable efforts to instruct eligible customers requesting the service in use of the equipment or service.

(5) **PETITION FOR WAIVER.** A local exchange service provider seeking a waiver of its blocking obligations under this section shall submit to the commission the following information:

- (a) The provider's name and address.
- (b) An explanation of why a waiver is being requested and of why the provider considers implementation of blocking to be an unreasonable expense for the provider and its customers.
- (c) Costs of hardware, software, programming, customer education, installation, maintenance and any other costs, on a per-customer basis, for blocking capability using customer premises equipment.
- (d) Costs of hardware, software, programming, customer education, installation, maintenance and any other costs, on a per customer basis, for blocking equipment installed in a central office, providing a separate calculation for each exchange for which an exemption is requested.
- (e) An estimate of the number of customers, by exchange, expected to request the service.

(6) The commission staff shall review the waiver request and issue a letter to the provider granting or denying the application.

History: Cr. Register, April, 1996, No. 484, eff. 5-1-96; am. (1), Register, April, 2000, No. 532, eff. 5-1-00.

PSC 160.05 Universal service fund programs. Universal service fund monies may be used for fund administration; for the purpose of informing the public regarding the universal service fund, its existence, purpose, intent and areas of use; and for the following purposes:

(1) For the following programs as adopted by the commission under the appropriation in s. 20.155 (1) (q), Stats.:

- (a) Link-Up America, as specified in s. PSC 160.061.
- (b) Lifeline assistance, as specified in s. PSC 160.062.
- (c) Voice mail service for the homeless, as specified in s. PSC 160.125 (1).
- (d) Telecommunications equipment purchase program (TEPP) vouchers, as specified in s. PSC 160.071 (1).
- (e) Telecommunications customer assistance program, as specified in s. PSC 160.08.
- (f) High rate assistance credits, as specified in s. PSC 160.09.
- (g) Alternative universal service protection plans, as specified in s. PSC 160.092.
- (h) Rate shock mitigation, as specified in s. PSC 160.10.
- (i) Assistance to institutions, as specified in s. PSC 160.11.
- (j) Intralata toll service provider of last resort, as specified in s. PSC 160.14.
- (k) Funding for programs or projects approved under s. PSC 160.125 (2).
- (L) Public interest pay telephones, as specified in s. PSC 160.073.
- (m) Outreach for low-income assistance programs, as specified in s. PSC 160.063.
- (n) Eligible telecommunications carriers designated under s. PSC 160.13 (5) (c).
- (o) Advanced service capabilities, as specified in s. PSC 160.035.
- (p) Second line for 2 line voice carryover, as specified in s. PSC 160.071 (6) (b).

(q) Medical telecommunications equipment program, as specified in s. 196.218 (4u), Stats.

(r) Payments by the department of public instruction to extend its contract with the National Federation of the Blind for the Newsline electronic information service, as specified in s. 9139 (1d), 1999 Wis. Act 9, and s. 196.218 (5) (a) 8., Stats.

(s) Other programs consistent with the purposes identified in s. 196.218 (5) (a) 1. and 2., Stats., as they are approved by the commission on an interim basis.

Note: The text of s. 196.218 (5) (a) 1. and 2., Stats., appears in a note after s. PSC 160.125 (2) (a).

(2) For payments by the technology for educational achievement in Wisconsin board for educational telecommunications access support, as specified in s. 196.218 (5) (a) 5., Stats., under the appropriation in s. 20.275 (1) (s), (t), (tm) and (tu), Stats., and for payments under the appropriation in s. 20.865 (4) (u), Stats.

(3) For payments to the department of administration for telecommunications services provided to the campuses of the university of Wisconsin system at River Falls, Stout, Superior and Whitewater, as specified in s. 196.218 (5) (a) 6., Stats., under the appropriation in s. 20.285 (1) (q), Stats.

(4) For grants awarded by the technology for educational achievement in Wisconsin board prior to July 1, 2002, as specified in s. 196.218 (5) (a) 7., Stats., under the appropriation in s. 20.275 (1) (s), Stats.

(5) For payments by the department of public instruction to contract for periodical and reference information databases as specified in s. 115.28 (26), Stats., under the appropriation in s. 20.255 (3) (q), Stats.

History: Cr. Register, April, 1996, No. 484, eff. 5-1-96; emerg. am. (intro.), renum. (1) to (10) to be (1) (a) to (j), cr. (2) to (4), eff. 2-27-98; am. (intro.), renum. (1) to (10) to be (1) (a) to (j), cr. (2) to (4), Register, October, 1998, No. 514, eff. 11-1-98; am. (intro.), (1) (c), (d), (i) and (2), cr. (1) (k) to (s) and (5), Register, April, 2000, No. 532, eff. 5-1-00.

PSC 160.06 Eligibility for low-income programs.

(1) **LOW-INCOME ASSISTANCE ELIGIBILITY.** Local exchange service providers shall verify an applicant's eligibility for low-income assistance programs by making timely queries of the applicable databases of the Wisconsin department of workforce development, the Wisconsin department of revenue, or other state agencies. Applicant eligibility shall be verified by finding the applicant to be any of the following:

(a) An active client of at least one of the programs listed in s. PSC 160.02 (8).

(b) A member of the active client's household whose low income qualifies the client for benefits under at least one of the programs listed in s. PSC 160.02 (8).

(c) A recipient of the Wisconsin homestead tax credit for the most recently completed tax year. If the applicant's tax filing for the most recently completed tax year has not been posted to the records of the Wisconsin department of revenue and if application for low-income assistance is made on or before June 30th, then the tax year prior to the most recently completed tax year may be used to determine eligibility.

(2) **ELIGIBILITY RECONFIRMATION.** Eligibility shall be reconfirmed on at least an annual basis for all customers receiving lifeline assistance.

(3) **ELIGIBILITY INQUIRY.** Local exchange service providers shall inquire of the customer regarding eligibility of that customer for low-income programs on each order for initial or moved residential service and, orally or in writing, in the first contact with a customer during a year concerning disconnection or payment arrangements.

(4) **QUERY AUTHORIZATION.** Local exchange service providers shall comply with client authorization requirements of the Wisconsin department of workforce development, the Wisconsin department of revenue, or other state agencies for database queries necessary for eligibility verification. Customers shall complete

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2. Serves federally designated health professional shortage areas as defined in 42 USC 254e(a)(1), medically underserved areas, or medically underserved populations, and

3. Does one or both of the following:

a. Provides services to all patients regardless of insurance status.

b. Uses a sliding fee scale for uninsured patients based on income status.

(c) "Public health agency" includes the department of health and family services, any local health department as defined in s. 250.01 (4), Stats., and any health care facility or program operated by a tribe or tribal organization under the Indian Self-Determination Act (25 USC 450f et seq.)

(2) Funding may be available to non-profit medical clinics and public health agencies for the purchase of telecommunications equipment for any of the following purposes:

(a) To promote technologically advanced medical services.

(b) To enhance access to medical care in rural or underserved areas of the state, or both.

(c) To enhance access to medical care by underserved populations or persons with disabilities in the state, or both.

(3) A maximum of \$500,000 in universal service fund support may be dispersed under this section per state fiscal year.

(4) (a) An application for universal service fund support under this section may not involve dispersement of support during multiple state fiscal years.

(b) All applications shall become public documents upon filing.

(5) Applications shall include all of the following:

(a) A description of the telecommunications equipment for which universal service fund support is requested.

(b) An explanation of how the applicant's purchase of such telecommunications equipment will support the purposes identified in sub. (2).

(c) Identification of the vendor that will supply the telecommunications equipment.

(d) A description of how the portion of the purchase price not covered by universal service fund support, if any, will be paid for.

(e) A description of the steps taken to secure the telecommunications equipment at reasonable prices.

(f) A statement certifying that the universal service fund support will be used for the purpose granted.

(g) Any other information that the commission deems necessary.

(6) (a) The commission shall evaluate all applications submitted under this section. Provided that funds remain for this purpose, the commission may approve an application if it includes the information required under sub. (5) and if the commission determines the following:

1. The applicant is a non-profit medical clinic or public health agency located in Wisconsin.

2. The applicant's purchase of telecommunications equipment will support the purposes identified in sub. (2).

3. The applicant will be able to pay for the portion of the cost of the equipment not funded under this section.

4. The medical clinic or public health agency has taken steps to secure the equipment at reasonable prices.

(b) Public health agencies and non-profit organizations that operate more than one location may receive universal service fund support for telecommunications equipment at more than one location, but before approving an application involving an additional location, the commission shall consider how much total universal service fund support has been received by such agency or organization during the state fiscal year and the total amount remaining available to be dispersed under this section during the fiscal

year. Preference may be given to initial applications filed by a public health agency or non-profit medical clinic.

(c) The commission may convene a panel of experts to assist in the evaluation of applications submitted under this section.

History: Cr. Register, April, 2000, No. 532, eff. 5-1-00.

PSC 160.125 Funding to promote access to telecommunications services. (1) VOICE-MAIL SERVICE FOR THE HOMELESS. (a) Any voice mail provider may be compensated for providing, on request, to a social services agency, a job service agency or other homeless shelter authority, voice-mail service without charge to be used by that agency or authority for the benefit of its homeless clients or residents.

(b) A voice-mail provider that is providing voice-mail boxes to a qualifying agency or authority at no charge may request and receive reimbursement only for its incremental usage and administrative costs of providing this service using available capacity. As an alternative, reimbursement may be requested and received from the fund at a standard rate set by the commission to cover expected incremental costs of providing this service using available capacity.

(c) A qualifying agency or authority administering or providing voice-mail service to homeless clients may request reimbursement for its costs directly attributable to administering and providing the voice-mail boxes for the benefit of its homeless clients.

(d) To evaluate the effectiveness of this program, the commission may monitor and obtain information on the offering of this service from the participating voice mail providers, social services agencies, job service agencies and homeless shelter authorities.

(e) A list of all individuals receiving voice mail under this section shall be maintained by the social services agencies, job service agencies or homeless shelter authorities participating in this program.

(2) ACCESS PROGRAMS OR PROJECTS BY NON-PROFIT GROUPS. (a) Partial funding may be available to non-profit groups for the facilitation of affordable access to telecommunications and information services through programs or projects, or both, not supported elsewhere in this chapter, but that are consistent with the purposes identified in s. 196.218 (5) (a) 1. and 2., Stats.

Note: As of November 1999, s. 196.218 (5) (a) 1. and 2., Stats., reads:

(5) USES OF THE FUND. (a) The commission shall require that moneys in the universal service fund be used only for any of the following purposes:

1. To assist customers located in areas of this state that have relatively high costs of telecommunications services, low-income customers and disabled customers in obtaining affordable access to a basic set of essential telecommunications services.

2. To assist in the deployment of advanced service capabilities of a modern telecommunications infrastructure throughout this state.

(b) Any non-profit group may apply for universal service funding to fund any portion of a program or project or both. Funding shall be provided on a state fiscal year basis. Applications for funding in the following fiscal year shall be submitted by November 15th. The commission shall issue a list of approved programs or projects, or both, by April 15th, with funding for those programs or projects, or both, to begin that July 1st. All applications shall become public documents upon filing.

(c) Applications shall include:

1. A description of a public need which is not being met at present;

2. A description of how the program or project is consistent with the purposes identified in s. 196.218 (5) (a) 1. and 2., Stats.

3. A description of the program or project proposed, including a description of how the public need described in subd. 1. may be met through affordable access to telecommunications or information services;

4. A showing that the proposed program or project meets the described public need in a least cost manner. This requirement can

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EMAIL

To: David.Austin@legis.state.wi.us
From: Bob Chernow
Date: August 28, 2001

David, please distribute my comments relating to use of "Universal Service Fund money to provide voice mail for the homeless" to the Joint Committee for Review of Administrative Rules (August 30, 2001, 1:00PM, PSC 160.05(1)(c) and 160.125(1)).

The proposed program is very dear to my heart and I appreciate the opportunity to share my views. As a former long-term leader of the Milwaukee Veterans Standdown for Homeless Vets I have more than a modest familiarity with some of the problems of the homeless.

A primary problem the homeless face in seeking employment is that they have no address or phone contact. Therefore, when they apply for a job, a potential employer has no way to contact them, except through a post office box. My own experience as an employer tells me that few people are contacted via a post office box.

The concept of a voice mailbox message system for the homeless has always appealed to me as voice mail provides a personalized location where employers can leave a message. An individual can retrieve these messages from any telephone. I tried over the years to raise funds for this type of a project. However, it was hard enough raising the \$7,000 to \$8,000 to sustain the Standdown, much less the additional \$3,000 to \$5,000 needed for voice mail in Milwaukee County.

The way I see the program administered would be through Veterans Job Service or State Job Service when a homeless vet uses their services. The voice mail would be for a limited period of time, six months at most. Costs would average \$21 a month per user, and the service could be canceled immediately upon the veteran (or other user) securing a job or for non-cooperation with Job Service.

We estimated a need in the state of 250 or 300 people. (Please note that some homeless live from home to home or have other forms of temporary shelter, such as the dormitories at the VA Hospital in Milwaukee.)

Let me give you an example of how voice mail would work. A Korean War vet truck driver had broken his glasses on the job. His employer fired him for not having a second pair of glasses as he had no money to purchase a new pair. The Standdown got him a new pair of glasses and he was able to obtain a job only by using one of the volunteer's phones to receive calls from potential employers. He had, however, no funds to get to the location on

Ryan Road to pick up his truck. I remember this clearly because I drove him to his new job during a blizzard. This is just one of many stories I could tell to demonstrate the type of needs that exist in our state.

A voice mail messaging system for the homeless is a good idea for the Universal Service Fund and a step forward for the telecommunications industry. It allows those who want to work to hear from potential employers, in a cost effective way consistent with the Universal Service Fund's mission statement.

I am a businessman, who helps clients manage money, and the part owner of several businesses. In addition, I serve as a trustee in River Hills and chair the Regional Telecommunication Commission (RTC) and the North Shore Cable Commission (NSCC). I served on several state commissions, and chaired the Milwaukee River South Watershed Commission.

Respectfully submitted, Bob Chernow



Joseph K. Leibham

STATE REPRESENTATIVE • 26TH DISTRICT

*City of Sheboygan Wards 1-3, 5,6,9, 11-16; Town of Sheboygan; Village of Kohler;
City of Sheboygan Falls; Town of Sheboygan Falls Ward 4*

August 30, 2001

Dear Co-Chairman Grothman, Co-Chairman Robson and Committee Members:

As Co-Chairman of the Legislative Joint Audit Committee, I am pleased to present some information regarding a recent audit of the Universal Service Fund (USF) and a provision that I introduced as part of the state budget process. I appreciate your interest in my testimony.

The audit of the UFS was released in December 2000. The audit reviewed the fund's financial statements for fiscal years (FY) 1999-00 and 1998-99. While the audit was able to provide an unqualified auditor's report on the financial statements, it did raise some questions regarding the amount of excess dollars available in the fund.

For instance, the audit found that since 1996, when the Public Service Commission (PSC) began to establish and operate these programs, their expenditures have been significantly less than the \$8.0 million that was budgeted for them annually. In FY 1999-2001, expenditures for the PSC-operated programs totaled only \$2.7 million.

In response to the lower expenditure levels, the assessments for PSC-related programs were suspended from January 1998 through July 2000. In August 2000, these assessments were reinstated. The PSC has budgeted \$6.9 million to support the Universal Service Fund programs it is operating during FY 2000-01.

Regardless of the audit, the PSC has submitted a program budget that calls for new programs and substantial increases in current program budgets. The budget motion I introduced was aimed at eliminating some questionable programs and decreasing some of the excessive funding increases. A copy of my motion is attached.

I appreciate your committee's interest in reviewing the expenditure of \$40,000 on a Voice Mail for the Homeless Program. My motion called for the deletion of this expenditure as well. Surely, it is justified to question whether this is the best use of valuable tax dollars.

I am working to draft legislation that will reduce the Universal Service Fund tax that is charged to telephone customers across the state. Reducing the funds available will force the PSC to expend the available dollars on truly worthy and necessary programs.

Thank you for your interest in my testimony. A copy of the audit summary is attached. Please contact me if I can provide any additional information. Thank you for your service to the State of Wisconsin!

Respectfully submitted,


Joseph K. Leibham
State Representative
26th Assembly District

**** Please note Rep. Leibham's new Sheboygan address: 3618 River Ridge Drive * Sheboygan, WI 53083 ****

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LEIBHAM

Caucus Budget Amendment

PUBLIC SERVICE COMMISSION - UNIVERSAL SERVICE FUND

Motion:

Delete appropriations for the following Universal Service Fund programs:

Voice Mail for the Homeless

PSC 160.125(1)

FY 02 - \$20,000

FY 03 - \$20,000

TOTAL MOTION – DELETE \$40,000

New program – cut \$20,000 a year and eliminate program.

Lifeline

PSC 160.062

FY 02 - \$1,000,000

FY 02 - \$1,000,000

TOTAL MOTION – DELETE \$2,000,000

Budgeting \$1,750,000 per year for total of \$3,500,000. My motion would eliminate \$1,000,000 per year leaving \$750,000 per year or \$1.5 m total.

1999 Actual - \$299,651

2000 Expected - \$401,000

Link-Up

PSC 160.061

FY 02 - \$150,000

FY 02 - \$150,000

TOTAL MOTION – DELETE \$300,000

Budgeting \$450,000 per year for total of \$900,000. My motion would eliminate \$150,000 per year leaving \$300,000 per year or \$600,000 total.

1999 Actual - \$207,280

2000 Expected - \$211,000

Outreach for Low-Income Programs

PSC 160.063

Amended:

FY 02 - \$150,000

FY 02 - \$150,000

TOTAL AMENDED MOTION – DELETE \$300,000

Budgeting \$250,000 per year – new expenditure – for a total of \$500,000. My motion would eliminate \$150,000 per year leaving \$100,000 per year or \$200,000 total.

Non-Profit Groups – Access Programs or Projects

PSC 160.125 (2)

FY 02 - \$500,000

FY 02 - \$500,000

Total motion – Delete \$1,000,000

Deletes new provision/program.

Administration

PSC 160.05

FY 02 - \$103,000

FY 02 - \$103,000

Total Motion – Delete \$206,000

Budgeting \$250,000 each year or a total of \$500,000. My motion would delete \$103,000 per year or a total of \$206,000.

1999 Actual - \$141,755

2000 Actual \$140,000

This cut still provides for an increase each year of over 5%

Total Savings \$4,037,000 SEG

Amended TOTAL SAVINGS - \$3,846,000 SEG



**WISCONSIN LEGISLATIVE AUDIT BUREAU
AUDIT SUMMARY**

Report 00-15

December 2000

UNIVERSAL SERVICE FUND

The Universal Service Fund was established in 1993 to ensure that all state residents receive essential telecommunications services and have access to advanced telecommunications capabilities. It is funded by assessments paid by telecommunications providers, which totaled \$14.1 million in fiscal year (FY) 1999-2000. The Fund supports telecommunications services and access programs that are provided by several state agencies, including the Public Service Commission (PSC), the Technology for Educational Achievement (TEACH) Board, the University of Wisconsin System, and the Department of Public Instruction. Expenditures from the Fund totaled \$13.0 million in FY 1999-2000.

We have audited the Universal Service Fund's financial statements for FYs 1999-2000 and 1998-99. We were able to issue an unqualified auditor's report on the financial statements.

Expenditures for PSC-Operated Programs Are Significantly Less Than Budgeted

The Universal Service Fund programs operated by the PSC help people with disabilities acquire special telecommunications equipment, lessen the financial effect of rate increases on users, and serve low-income individuals. However since 1996, when the PSC began to establish and operate these programs, their expenditures have been significantly less than the \$8.0 million that was budgeted for them annually. In FY 1999-2000, expenditures for the PSC-operated programs totaled only \$2.7 million.

In response to the lower expenditure levels, the assessments for the PSC-related programs were suspended from January 1998 through July 2000. In August 2000, these assessments were reinstated. A number of programmatic changes have also been made to the PSC-operated programs, which likely will change their future funding needs. The PSC has budgeted \$6.9 million to support the Universal Service Fund programs it is operating during FY 2000-01, including \$650,000 for promotion and outreach efforts to increase awareness and use of the programs.

Support for Internet Access Represents the Largest Fund Expenditures

The largest program currently funded by the Universal Service Fund is the Educational Telecommunications Access Program, which is operated by the TEACH Board. During FY 1999-2000, \$8.8 million, which is 67 percent of total fund expenditures, was expended on this program, which provides subsidies and grants for data lines and video links to schools, libraries, and others. As of June 30, 2000, subsidies and grants for 788 data lines and video links had been provided.

In contrast to the PSC-operated programs that have not met spending expectations, the Educational Telecommunications Access Program has required additional expenditure authority. The Governor requested an increase of \$10.5 million from the Universal Service Fund for the program in his 1999-01 biennial budget. To provide more control over the program's expenditures, the Legislature transferred one-half of the proposed funding increase to a reserve.



Public Service Commission of Wisconsin

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August 30, 2001

Senator Judith Robson
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Representative Glenn Grothman
Room 15 North
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Dear Senator Robson and Representative Grothman:

I am writing at the request of Senator Robert Welch to provide background on the issues which the Committee may wish to consider as it reviews the Public Service Commission's rules concerning the Universal Service Fund and its applicable provisions pertaining to the Voice Mail for the Homeless Program. Senator Welch has identified the process by which policy makers may pursue review and, where indicated, the suspension of certain provisions of the Commission's rules found in section Wis. Admin. Code ch. PSC 160.

The Universal Service Fund was created in Wis. Stat. § 196.218, with particular direction that the Commission promulgates rules that define the basic set of the essential telecommunications services under Wis. Stat. § 196.218(4). According to the dictates of that statute, the Commission has promulgated rules concerning the collection, administration and expenditure of the Universal Service Fund. Also according to that charge, the Commission has defined as a component of essential telecommunications services voice mail service for the homeless under Wis. Admin. Code §§ PSC 160.05(1)(c) and 160.125(1).

Each time the Universal Service Fund has been the subject of Commission-initiated Joint Finance Committee budgetary requests or review, the nominal amount designated for authorization to be spent on this program has remained at least \$20,000 per fiscal year. Actual spending on the program, however, has not exceeded \$3,200 in total during the existence of the Voice Mail for the Homeless Program. The foregoing amount has been spent pursuant to a grant awarded to Transitional Housing, Inc. (THI), to arrange for a basic access line and applicable equipment to enable clients at that institution to use landline service. The voice mail accounts accessed through the use of that landline service were donated by a telecommunications provider.

It would seem that the basic issue before this Committee is the proper definition of an essential telecommunications service in the context of the Voice Mail for the Homeless Program. As the Committee determines what is and, conversely, what is not an essential telecommunications service worthy of funding through the Universal Service appropriation, I offer for its consideration what I believe to be a debatable point, about which reasonable people

may differ, concerning the Voice Mail for the Homeless Program. For any customer currently subscribing to landline local exchange service, voice mail stands as a vertical feature like three-way calling, call forwarding and call waiting. These services for one who possesses basic residential service, and by necessary inference a residence, may be properly regarded as "wants" and not "needs." For one who has no residence and, accordingly, no fixed location for which landline service may be subscribed, the picture is markedly different. In this instance, voice mail stands merely as a device to receive messaged telecommunications service and is perhaps the only telecommunications service available. The use of that service may prove to be invaluable in maintaining contact with relatives, potential landlords or potential employers.

It goes without saying, that should it be the will of a majority of a quorum of this Committee to suspend those provisions of the Commission's Universal Service Fund rules that pertain to the Voice Mail for the Homeless Program, the Commission will abide by that decision. To the contrary, if the Voice Mail for the Homeless Program is retained, it is in serious need of good ideas for its proper application and promise. I thank the members of the Committee in advance for the valuable consideration which they may give this important issue.

Sincerely,



Joseph P. Mettner
Commissioner

JPM:aff

X:/Universal Service Fund letter - ds

cc: Joint Committee for Review of Administrative Rules Members

Voice Mail for the Homeless
PSC 160.125(1)
Joint Committee for Review of Administrative Rules
August 30, 2001

Ray J. Riordan, Executive Vice President on behalf of the Wisconsin State Telecommunications Association.

Voice Mail for the homeless is a social program. It was not the type of program that was intended to be funded when the Universal Service Fund was created. Further, the program has been a failure since its inception. The program was initiated and funded in 1996. It has been funded each year since. However, through the year 2000 no funds had ever been spent to provide any homeless person with voice mail.

USF Funds may be used for limited purposes. §196.218(5)(a) of the Wisconsin statutes identifies the purposes for which the funds may be used, and is attached to my testimony. Nothing in that subsection authorizes voice mail for the homeless. Funds may be used to assist certain customers in obtaining affordable access to a basic set of essential telecommunications services. However, the Commission has not identified voice mail as an essential service. Also, attached is the Wisconsin Administrative Code that identifies essential services.

The Commission has budgeted \$20,000 a year for this program. No one used the program for the years 1996 through 2000. It certainly does not appear that this program is filling any purpose, much less a purpose provided for in the statutes. It is my understanding that a little over \$4,000 has been committed for the year 2001, but I do not know if one homeless person is using the service.

There are other social programs that should not be funded by the Universal Service Fund. These are funded through a relatively new USF program entitled "Access Programs or Projects by Non-profit Groups." This program and the voice mail for the homeless program are in PSC 165.125, which is attached.

For example, in November the Commission granted Transitional Housing, Inc. \$4,664 to provide free long distance calling cards and telephone lines to the homeless. Another \$6,788 was provided in May.

\$30,000 was awarded in November to Community Advocates of Milwaukee to educate families regarding managing finances and to advocate for families against telephone companies and negotiate for those families to maintain their telephone service when they have not paid their bills. Another \$55,000 was awarded in May.

\$101,800 was awarded to the Coalition of Wisconsin Aging Groups. This is to provide video conferencing capability at their centers in Madison and four other sites.

Several other similar grants were awarded. In November of 2000 a total of \$193,645 was approved. Last May \$171,268 was approved.

The state Universal Service Fund was created to assist in providing affordable access to a basic set of essential telecommunications services to customers in high cost areas, low-income customers, and disabled customers. It is to also assist in the deployment of advanced service capabilities of a modern telecommunications infrastructure throughout the state.

It is not to provide added services that most customers do not have or provide computer training or to provide video conferencing to non-profit groups.

It's time this fund focuses on its real purpose rather than addressing these other societal concerns.

PURPOSES FOR WHICH UNIVERSAL SERVICE FUNDS MAY BE USED

(5) USES OF THE FUND. (a) The commission shall use the moneys in the universal service fund only for any of the following purposes:

1. To assist customers located in areas of this state that have relatively high costs of telecommunications services, low-income customers and disabled customers in obtaining affordable access to a basic set of essential telecommunications services.

2. To assist in the deployment of advanced service capabilities of a modern telecommunications infrastructure throughout this state.

4. To administer the universal service fund.

5. To pay costs incurred under contracts under s. 16.974 (7) to the extent that these costs are not paid under s. 44.73 (2) (d).

5m. To provide statewide access, through the Internet, to periodical reference information databases.

6. To pay the department of administration for telecommunications services provided under s. 16.973 (1) to the campuses of the University of Wisconsin System at River Falls, Stout, Superior and Whitewater.

7. To make grants awarded by the technology for educational achievement in Wisconsin board to school districts and private schools under s. 44.73 (6). This subdivision does not apply after June 30, 2002.

8. To promote access to information and library services to blind and visually handicapped individuals.

9. To make grants under sub. (4u).

(b) The commission shall promulgate rules to determine whether a telecommunications provider, the customers of a telecommunications provider or another person shall be assisted by the universal service fund for any use under par. (a) 1. to 4.

(c) The commission shall consider all of the following in establishing the services and equipment which may be assisted by the universal service fund:

1. The impact of the assistance on all members of the public and the telecommunications industry.

2. Eligibility requirements for assistance recipients.

3. The costs of administering the assistance.

4. Telecommunications plans and requirements established by the federal rural electrification administration.

5. The extent to which the fund preserves and promotes an available and affordable basic set of essential telecommunications services, encourages access to the advanced service capabilities of a modern telecommunications infrastructure throughout the state and promotes economic development.

(d) 1. In this paragraph, "Wisconsin works agency" has the meaning given in s. 49.001 (9).

2. The commission shall annually provide information booklets to all Wisconsin works agencies that describe the current assistance from the universal service fund that is available to low-income individuals who are served by the Wisconsin works agencies, including a description of how such individuals may obtain such assistance. The department of workforce development shall assist the commission in identifying the Wisconsin works agencies to which the commission is required to submit the information required under this subdivision.

ESSENTIAL TELECOMMUNICATIONS SERVICES

PSC 160.03 Essential telecommunications services. (1) Each local exchange service provider shall make available to all its customers at affordable prices all essential telecommunications services.

(2) "Essential telecommunications services" means all the following:

(a) Single-party voice-grade service with:

1. Line quality capable of facsimile transmission.
2. Line quality capable of data transmission as specified in s. PSC 160.031.
3. Dual-tone multi-frequency touch tone and rotary pulse dialing operability.
4. Access to emergency services numbers and 9-1-1 operability where requested by local authorities.
5. Equal access to interlata interexchange carriers subject to federal communications commission orders and rules.
6. Equal access to intralata interexchange carriers pursuant to schedules, terms and conditions imposed by commission orders and rules.
7. Single party revertive calling, if 2 or more pieces of customer premises equipment can be simultaneously active on the line or channel being used by the customer.
8. A reasonably adequate number of calls within a reasonably adequate local calling area as defined by the commission.
9. Connectivity with all public toll, local, wireline and wireless networks, and with various internet service providers.
10. Telecommunications relay service to facilitate communication between teletypewriter users and non-teletypewriter users.
11. Access to operator service.
12. Access to directory assistance.
13. Toll blocking, 900 and 976 number blocking and extended community calling blocking options as specified in s. PSC 160.04.
14. Intercept and announcements for vacant, changed, suspended and disconnected numbers in oral and TTY-readable formats.
15. A directory listing with the option for non-listed and non-published service.

(b) Annual distribution of a local telephone directory in accordance with s. PSC 165.055.

(c) Timely repair.

History: Cr. Register, April, 1996, No. 484, eff. 5-1-96; am. (2) (a) 7. to 10., and 14., r., (2) (c), renum. (2) (d) to be (2) (c), Register, April, 2000, No. 532, eff. 5-1-00; except (2) (a) 14. eff. 11-1-00.

VOICE MAIL FOR THE HOMELESS ACCESS PROGRAMS AND PROJECTS BY NON-PROFIT GROUPS

PSC 160.125 Funding to promote access to telecommunications services. (1) VOICE-MAIL SERVICE FOR THE HOMELESS. (a) Any voice mail provider may be compensated for providing, on request, to a social services agency, a job service agency or other homeless shelter authority, voice-mail service without charge to be used by that agency or authority for the benefit of its homeless clients or residents.

(b) A voice-mail provider that is providing voice-mail boxes to a qualifying agency or authority at no charge may request and receive reimbursement only for its incremental usage and administrative costs of providing this service using available capacity. As an alternative, reimbursement may be requested and received from the fund at a standard rate set by the commission to cover expected incremental costs of providing this service using available capacity.

(c) A qualifying agency or authority administering or providing voice-mail service to homeless clients may request reimbursement for its costs directly attributable to administering and providing the voice-mail boxes for the benefit of its homeless clients.

(d) To evaluate the effectiveness of this program, the commission may monitor and obtain information on the offering of this service from the participating voice mail providers, social services agencies, job service agencies and homeless shelter authorities.

(e) A list of all individuals receiving voice mail under this section shall be maintained by the social services agencies, job service agencies or homeless shelter authorities participating in this program.

(2) ACCESS PROGRAMS OR PROJECTS BY NON-PROFIT GROUPS.

(a) Partial funding may be available to non-profit groups for the facilitation of affordable access to telecommunications and information services through programs or projects, or both, not supported elsewhere in this chapter, but that are consistent with the purposes identified in s. 196.218 (5) (a) 1. and 2., Stats.

Note: As of November 1999, s. 196.218 (5) (a) 1. and 2., Stats., reads:

(5) *USES OF THE FUND.* (a) *The commission shall require that moneys in the universal service fund be used only for any of the following purposes:*

1. *To assist customers located in areas of this state that have relatively high costs of telecommunications services, low-income customers and disabled customers in obtaining affordable access to a basic set of essential telecommunications services.*

2. *To assist in the deployment of advanced service capabilities of a modern telecommunications infrastructure throughout this state.*

(b) Any non-profit group may apply for universal service funding to fund any portion of a program or project or both. Funding shall be provided on a state fiscal year basis. Applications for funding in the following fiscal year shall be submitted by November 15th. The commission shall issue a list of approved programs or projects, or both, by April 15th, with funding for those programs or projects, or both, to begin that July 1st. All applications shall become public documents upon filing.

(c) Applications shall include:

1. A description of a public need which is not being met at present;

2. A description of how the program or project is consistent with the purposes identified in s. 196.218 (5) (a) 1. and 2., Stats.

3. A description of the program or project proposed, including a description of how the public need described in subd. 1. may be met through affordable access to telecommunications or information services;

4. A showing that the proposed program or project meets the described public need in a least cost manner. This requirement can

be met by showing that the applicant carried out an appropriate request for proposals.

5. Identification of the providers of each portion of the telecommunications services or equipment and a specific description of the following components of the program or project:

a. The costs of telecommunications services and telecommunications equipment used by the program or project;

b. The cost of training for those who are served by the program or project so that they can utilize the services;

c. The administrative costs directly attributable to the program or project;

d. The cost of technical expertise required to complete the program or project; and

e. Revenue from services or training described in subd. 5.b.

(d) The commission shall evaluate all applications submitted. In evaluating the applications the commission shall consider information including, but not limited to, the following:

1. The basis of the public need to be met;

2. The extent to which other programs or projects, either funded under this section or otherwise under this chapter, meet that need; and

3. The overall cost of the proposed program or project.

(e) The universal service fund shall reimburse applicants for up to 50% of the cost of reimbursable portions of the program or project, or both. The reimbursable costs include those listed in par. (c) 5.a. to d.

(f) The programs or projects, or both, to be funded and the amount of reimbursement for each program or project shall be determined by the commission. The commission shall seek comments on the programs or projects to be funded, but shall not hold a hearing. A maximum of \$500,000 in funding may be dispersed under this subsection per state fiscal year.

History: Cr. Register, April, 1996, No. 484, eff. 5-1-96; renum. from 160.063 (title), (1), (2), (3) and (4) to be 160.125 (1) (title), renum. (1) to (4) to be (1) (a), (b), (d) and (e), cr. (1) (c) and (2), Register, April, 2000, No. 532, eff. 5-1-00.

Emergency Rule ATCP 80

Relating to pathogen tests on ready-to-eat dairy products. Extension of the effective period of this emergency rule for 60 days at the request of the Department of Agriculture, Trade and Consumer Protection. First consideration.



State of Wisconsin
Scott McCallum, Governor

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

July 10, 2001

The Honorable Judy Robson, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 South State Capitol
Madison, WI 53702

The Honorable Glenn Grothman, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 North State Capitol
Madison, WI 53702

Dear Senator Robson and Representative Grothman:

Re: **Emergency Rule Extension – Pathogen Tests on Ready-to-Eat Dairy Products**

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 July 30, 2001. The department asks JCRAR to extend the emergency rule for 60 days, until September 28, 2001.

This emergency rule repeals a counterproductive pathogen test reporting requirement that discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale. The emergency rule creates alternatives that provide better public health protection and encourage more pathogen testing.

Under this rule, a dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin. A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:

- The tested product bears a product code or production lot number.
- The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This requirement is continued. DATCP may inspect and copy test records as necessary.

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

Honorable Judy Robson
Honorable Glenn Grothman
July 10, 2001
Page 2

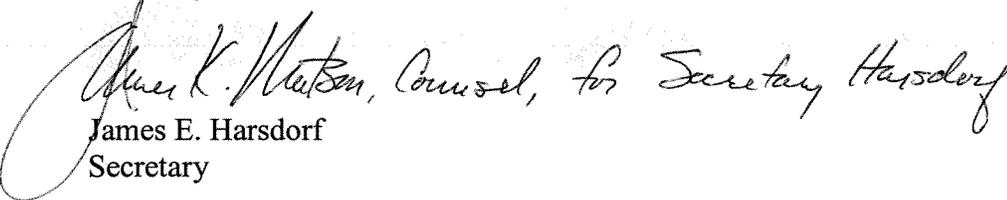
department has started "permanent" rulemaking proceedings, but will not be able to complete those proceedings before the emergency rule expires. The department is therefore asking JCRAR to extend the emergency rule.

The department held a public hearing on both the emergency rule and permanent rule on June 14 and 15, 2001. A total of 2 persons appeared in support of the rule. The department also received two written comments asking the department to qualify the phrase "test results that confirm the presence of a pathogenic organism or toxin" by adding the language "beyond established tolerance limits." The department will consider these comments when it adopts its "permanent" rule, but proposes no change in the emergency rule.

The Department plans to submit a final draft rule for DATCP Board approval in August, 2001. 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



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: February 23, 2001

TO: State Legislators

FROM: Ben Brancel, Secretary

FEB 26 2001

[Handwritten signature]
AUST ZIMMERMAN

SUBJECT: Emergency Rule Related to Pathogen Tests on Ready-to-Eat Dairy Products

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) is forwarding a copy of an emergency rule related to pathogen tests on ready-to-eat dairy products. DATCP believes that this emergency rule will provide better public health protection and encourage dairy plants to perform more pathogen tests. It will also facilitate sales of Wisconsin dairy products.

Background

DATCP licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

This emergency rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.
- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products *unless* all the following apply:
 - * The tested product bears a product code or production lot number.
 - * The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This requirement will continue. DATCP may inspect and copy test records as necessary.

Why an Emergency Rule is Needed

Many dairy product distributors are currently asking dairy plant operators to perform pathogen tests on dairy products, before the distributors accept those products from the dairy plant operators. Many dairy plant operators are willing to perform these tests, but they are discouraged by current rules that require them to report test results to DATCP – even on products withheld from sale.

This emergency rule will remove the disincentive to test, and will improve public health protection. Under this rule, a dairy plant operator must report pathogen findings to DATCP *unless* the operator withholds the entire affected lot of dairy products from sale. This rule will encourage more routine testing for pathogens.

This rule creates a “win-win” situation for consumers and dairy plant operators. By encouraging more pathogen testing, it will provide immediate public health benefits. It will also eliminate current obstacles to the sale of Wisconsin dairy products. In order to protect the public health, safety and welfare, it is important to implement these rule changes as soon as possible. This emergency rule will implement the changes on an interim basis, pending the adoption of “permanent” rules.

Fiscal Effect

This rule will have no fiscal effect on DATCP or local units of government. A fiscal note is attached.

Next Steps

This emergency rule will take effect upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature’s Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 more days. DATCP will begin work on “permanent” rules to implement this rule change on a long term basis.

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING EMERGENCY RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts
2 the following emergency rule to repeal ATCP 80.56(4); to renumber ATCP 80.56(intro.) and (1)
3 to (3); and to create ATCP 80.24(5) and 80.56(2); relating to pathogen tests on ready-to-eat dairy
4 products.

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

Statutory authority: ss. 93.07(1), 97.09(4) and 97.20(4), Stats.
Statute interpreted: ss. 97.09(4) and 97.20(4), Stats.

The Department of Agriculture, Trade and Consumer Protection (DATCP) licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

This emergency rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.
- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:
 - * The tested product bears a product code or production lot number.
 - * The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This requirement will continue. DATCP may inspect and copy test records as necessary.

1 **FINDING OF EMERGENCY**

2 The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) finds that
3 an emergency exists and that the following emergency rule is necessary to protect public health,
4 safety and welfare. The facts constituting the emergency are as follows:

5 (1) DATCP licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP
6 rules, under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to
7 DATCP the results of any microbiological test that confirms the presence of a pathogenic
8 organism in a pasteurized or ready-to-eat dairy product.

9 (2) There has been a nationwide increase in food borne disease outbreaks associated with
10 food and dairy products. Such outbreaks can occur when ready-to-eat foods enter food
11 distribution channels without being tested for pathogenic bacteria.

12 (3) There is no national or state law requiring dairy plant operators to test ready-to-eat
13 dairy products for pathogens prior to sale or distribution. Dairy plant operators have a natural
14 incentive to test, in order to avoid liability and meet their customers' product safety demands.
15 But the current test reporting requirement under ATCP 80.56(4) discourages pathogen testing,
16 because test reports become public records that may be open to public inspection even if the
17 affected products are withheld from distribution.

18 (4) There is an urgent need to repeal this counterproductive reporting requirement, and
19 to create alternative rules that will encourage pathogen testing and provide stronger public health
20 protection. This emergency rule will encourage more pathogen testing, and provide stronger
21 public health protection, pending the adoption of "permanent" rule changes.

1 **EMERGENCY RULE**

2 **SECTION 1.** ATCP 80.24(title) is amended to read:

3 ATCP 80.24(1)(title) **Milk and dairy products; quality standards**

4 **SECTION 2.** ATCP 80.24(5) is created to read:

5 ATCP 80.24(5) **PATHOGEN CONFIRMED IN READY-TO-EAT DAIRY PRODUCT; SALE**

6 **PROHIBITED.** A dairy plant operator may not sell or distribute any ready-to-eat dairy product in
7 which a microbiological test or laboratory analysis has confirmed the presence of a pathogenic
8 organism or toxin.

9 **SECTION 3.** ATCP 80.56(intro.) and (1) to (3) are renumbered ATCP 80.56(1)(intro.)
10 and (a) to (c).

11 **SECTION 4.** ATCP 80.56(4) is repealed.

12 **SECTION 5.** ATCP 80.56(2) is created to read:

13 ATCP 80.56(2)(a) Except as provided in par. (b), a dairy plant operator shall report to
14 the department the result of any microbiological test or laboratory analysis that confirms the
15 presence of a pathogenic organism or toxin in a ready-to-eat dairy product produced by the
16 operator. The operator shall report to the department within 24 hours after the operator obtains
17 the test result. The operator may report orally, electronically or in writing.

18 (b) A dairy plant operator is not required to report a test result under par. (a) if all the
19 following apply:

20 1. The ready-to-eat dairy product is identified by a product code or production lot
21 number.

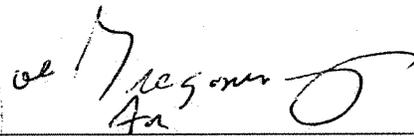
22 2. The operator does not sell or distribute any ready-to-eat dairy product that bears the
23 product code or production lot number under subd. 1.

1 **EFFECTIVE DATE.** The emergency rule contained in this order shall take effect on March
2 1, 2001, and shall remain in effect for 150 days, as provided under s. 227.24(1)(c), Stats. The
3 department may seek to extend this emergency rule as provided in s. 227.24(2), Stats.

Dated this 26th of February, 2001

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

By

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

Ben Brancel, Secretary

Fiscal Estimate — 1999 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Ch. ATPC 80

Subject

Emergency rule to repeal ATPC 80.56(4) and to create ATPC 80.24(4) and 80.56(2); relating to pathogen tests on ready-to-eat dairy products.

Fiscal Effect

State: No State Fiscal Effect

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

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

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

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

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

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

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 20.115(1)(gb)

Assumptions Used in Arriving at Fiscal Estimate

The Department of Agriculture, Trade and Consumer Protection ("department") licenses and inspects dairy plants under Wis. Stats. § 97.20. Under s. 80.56(4), Wis. Admin. Code, the department requires the dairy plant operator to report to the department results of any microbiological test conducted on a pasteurized or ready-to-eat dairy product that confirms the presence of pathogenic organisms in that product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

This emergency rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing.

The proposed emergency rule has no anticipated fiscal impact on the department.

Long-Range Fiscal Implications

None anticipated.

Prepared By: C. Thomas Leitzke	Telephone No. (608) 224-4711	Agency DATCP
Authorized Signature <i>Barbara Knapp</i>	Telephone No. ²²⁴⁻ 224 4746	Date (mm/dd/ccyy) 2-23-01

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

NOTICE OF HEARING

Rules Relating To Pathogen Tests On Ready-To-Eat Dairy Products

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings, at the times and places indicated below, on its emergency rule and a proposed permanent rule to amend Chapter ATCP 80, Wisconsin Administrative Code, relating to pathogen tests on ready-to-eat dairy products. The public is invited to attend the hearings and make comments on the the emergency rule and proposed permanent rule. Following the public hearings, the hearing record will remain open until June 29, 2001, for additional written comments.

A copy of the emergency and proposed permanent rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, or by calling 608-224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by June 7, 2001 either by writing to Debbie Mazanec, Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, (608-224-4712), or by contacting the message relay system (TTY) at 608-224-5058. Handicap access is available at the hearing locations.

Hearing Dates, Times And Locations

Date and Time: Thursday, June 14, 2001
 10:00 a.m. – 12:00 noon

Location: Appleton Public Library
 Lower Level Mtg. Room
 925 S. Oneida Street
 Appleton, WI 54911
 Handicapped accessible

Date and Time: Friday, June 15, 2001
 10:00 a.m. - 12:00 noon

Location: Iowa County Courthouse
 County Board Room, 2nd Floor
 222 N. Iowa Street
 Dodgeville, WI 53533
 Handicapped accessible

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

Statutory authority: ss. 93.07(1), 97.09(4) and 97.20(4), Stats.
Statute interpreted: ss. 97.09(4) and 97.20(4), Stats.

The Department of Agriculture, Trade and Consumer Protection (DATCP) licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

This emergency and proposed permanent rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.
- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:
 - * The tested product bears a product code or production lot number.
 - * The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This requirement will continue. DATCP may inspect and copy test records as necessary.

Finding Of Emergency

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) finds that an emergency exists and that the following emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

(1) DATCP licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules, under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product.

(2) There has been a nationwide increase in food borne disease outbreaks associated with food and dairy products. Such outbreaks can occur when ready-to-eat foods enter food distribution channels without being tested for pathogenic bacteria.

(3) There is no national or state law requiring dairy plant operators to test ready-to-eat dairy products for pathogens prior to sale or distribution. Dairy plant operators have a natural incentive to test, in order to avoid liability and meet their customers' product safety demands. But the current test reporting requirement under ATCP 80.56(4) discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from distribution.

(4) There is an urgent need to repeal this counterproductive reporting requirement, and to create alternative rules that will encourage pathogen testing and provide stronger public health protection. This emergency rule will encourage more pathogen testing, and provide stronger public health protection, pending the adoption of "permanent" rule changes.

Fiscal Estimate

The Department of Agriculture, Trade and Consumer Protection ("department") licenses and inspects dairy plants under Wis. Stats. ss 97.20. Under s. 80.56(4), Wis. Admin. Code, the department requires the dairy plant operator to report to the department results of any microbiological test conducted on a pasteurized or ready-to-eat dairy product that confirms the presence of pathogenic organisms in that product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

The emergency rule and proposed permanent rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing.

The emergency rule and proposed permanent rule has no anticipated fiscal impact on the department.

Initial Regulatory Flexibility Analysis

The Department of Agriculture, Trade and Consumer Protection (DATCP) licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

The proposed rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing. The proposed changes are already in effect under an emergency rule which the department adopted. This rule will make the temporary rule changes permanent. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.
- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:
 - * The tested product bears a product code or production lot number.
 - * The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This rule requires no additional recordkeeping or other procedures for dairy plants. Small dairy plants will need no additional professional skills or assistance in order to comply with this rule.

This permanent rule will have minimal financial impact on the dairy industry.

Dated this 14 of May, 2001

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

By James E. Harsdorf
James E. Harsdorf
Secretary