☞ **07hr_CRule_06-032_SC-LEUA_pt03**

Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2007-08
(session year)

Senate
(Assembly, Senate or Joint)

Committee on ... Labor, Elections and Urban Affairs (SC-LEUA)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (October/2010)

Date?

Clearinghouse Rule 06-032

State of Wisconsin

Department of Workforce Development
Unemployment Insurance Division

Unemployment Insurance and Temporary Help Employers
Chapter DWD 133

The Wisconsin Department of Workforce Development proposes an order to create Chapter DWD 133, relating to unemployment insurance and temporary help employers and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.14 (2) and 227.11, Stats.
Statutes interpreted: Sections 108.04 (7), 108.04 (8)
Related statutes: Sections 108.02 (24m) and 108.065, Stats.

Explanation of agency authority. Section 108.14 (2), Stats., provides that the Department may adopt and enforce all rules which it finds necessary or suitable to carry out Chapter 108, Stats., regarding unemployment insurance. Section 108.04 (7), Stats., provides that if an employee terminates work with an employing unit, the employee is ineligible for unemployment insurance except under certain conditions. Section 108.04 (8), Stats., provides that if an employee fails, without good cause, to accept suitable work when offered, the employee is ineligible for unemployment insurance except under certain conditions.

Summary of proposed rule. For the purpose of unemployment insurance, an employment relationship normally ends when an employee is laid off without a definite return-to-work date, even if recall is anticipated. If a subsequent offer is refused, it is considered a refusal of new work under s. 108.04 (8), Stats. The employment relationship between a temporary help agency and its employees does not follow the patterns that apply to most other employment relationships. In the temporary help industry, it is common for employees to be assigned to a series of assignments at different locations with different duties, wages, and other conditions. It is also common for these assignments to end with little or no notice to either the employee or the employer. While the parties may fully intend to continue the relationship, the short notice that an assignment has ended may require that a short period of time pass before the employer is able to send the employee to the next assignment. This proposed rule establishes standards for determining whether the employment relationship continues or is terminated for the purpose of unemployment insurance benefit eligibility.

When an assignment from a temporary help employer ends, an employee is eligible for unemployment insurance benefits while the employment relationship continues between assignments, if he or she is otherwise qualified. Under the proposed rule, the employment relationship between a temporary help employer and the employee is considered to be a continuing relationship if all of the following conditions are met:

- On or before the end of the first full business day after the end of an assignment, the employee contacts the employer, or the employer contacts the employee, and informs the other that the assignment has ended. The department may waive the requirement for this notice or the deadline, or both, if it determines that the employee's failure to communicate was for good cause and the employer and employee have otherwise acted in a manner consistent with the continuation of the employment relationship.
- On or before the end of the first full business day after the end of an assignment, or on or before the end of the first full business day after the date notice was given under par. (a) if the deadline for the notice was waived, the employer informs the employee that the employer will provide a new assignment that will begin within 7 days of the date the employee is informed of the new assignment and either the employer provides a new assignment that does begin within 7 days or, within that same 7-day period, the employer notifies the employee of a delay in the start of the new assignment or notifies the employee of another assignment that will begin within 7 days of the new notice and the delayed or other assignment does begin within those 7 days.
- The assignment offered by the employer meets the conditions under which the individual offered to work, including the type of work, rate of pay, days and hours of availability, distance willing to travel to work, and available modes of transportation, as set forth in the individual's written application for employment with the employer submitted prior to the first assignment, or as subsequently amended by mutual agreement. The employer has the burden of proof to show that the assignment meets these requirements.

Chapter 108, Stats., provides that an employee is ineligible for unemployment insurance if the employee voluntarily separated from the employment, unless certain exceptions apply. Under the proposed rule, the employment relationship between a temporary help employer and the employee is considered to be voluntarily separated by the employee when any of the following occur:

- The employee fails to notify the employer that an assignment has ended if the employer's policy requires such notification and the employee had notice of this policy prior to the end of the assignment, provided that the employer is not aware that the assignment has ended.
- The employee refuses an assignment while the employment relationship continues.
- The employee fails to respond to an offer of work by the employer within a reasonable time period, while the employment relationship continues.
- The employer is unable to communicate an offer of work to the employee because of the employee's failure to provide the employer with a correct address,

telephone number, or other contact information while the employment relationship continues.

- Any other circumstances that would be considered separation by the employee under Chapter 108, Stats.

If an employment relationship does not continue under the terms of the proposed rule, the employment shall be considered separated by the employer unless the employee has voluntarily separated from the employment as provided in the list above or any other provision of Chapter 108, Stats.

When the employment relationship terminates, the employee's application for employment shall expire. If the employee returns to work for the employer, a new application for employment will be required for this chapter to be applicable. If the employee agrees in writing, the original application may be treated as a new application for employment.

Summary of factual data and analytical methodologies. In 1994 the Department responded to concerns expressed by temporary help employers and adopted a policy that considers the employment relationship between a temporary help employer and its employee to continue for a maximum of 14 days after the last day of work while the employer looks for another assignment for the employee, provided the employer guaranteed the employee an assignment to begin within that time period. Refused assignments during that 14-day extension period are considered separations by the employee.

The proposed Chapter DWD 133 codifies the informal policy that is currently in place, with minor adjustments. The proposed rule provides for an extension of the employment relationship while the employer finds a new assignment for the employee, provided that future offers of work are within the confines of the application for employment. The application for employment will be treated as a quasi-employment contract. This provides protection for the employer and the employee as both parties are put on notice as to what type of work will continue the employment relationship. If a subsequent assignment made within the confines of the application for employment is refused during the extension period, the employee is considered to have separated because the employment relationship is considered to still exist.

Comparison with federal law. There is no federal unemployment insurance law that specifically covers treatment of employees of temporary help companies.

Comparison with rules in adjacent states. Minnesota. An individual who within 5 calendar days after completion of a suitable temporary job assignment fails without good cause to affirmatively request an additional job assignment or refuses without good cause an additional suitable job assignment offered shall be considered to have quit employment. This provision applies only if at the beginning of employment with the temporary help company, the applicant signed and was provided a copy of a separate

document that informed the applicant of this paragraph and that unemployment benefits may be affected.

Iowa. An individual who fails without good cause to notify the temporary help company of the completion of an assignment and seek reassignment within 3 working days shall be considered to have voluntary quit employment, unless the individual was not advised in writing of the duty to notify the temporary help company of the completion of an assignment.

Michigan. An individual is disqualified from receiving benefits if the temporary help company provided the employee with written notice before the employee began performing services stating that within 7 days after completion of an assignment the employee must notify the temporary help company and failure to provide notice of completion of an assignment constitutes a voluntary quit that will affect the employee's eligibility for unemployment insurance and the employee did in fact not notify the temporary help company of completion of the assignment within 7 days.

Illinois. There is a rebuttable presumption that an individual is not actively seeking work if the individual was last employed by a temporary help company and the temporary help company alleges that during the week for which the individual claimed benefits, he or she did not contact the temporary help company for an assignment. The presumption is rebutted if the individual shows that he or she did contact the temporary help company or that he or she had good cause for failure to contact the temporary help company for an assignment.

Effect on small business. The proposed rule will affect temporary help employers, some of which are small businesses. Using the best data available, the Department estimates that the number of temporary help employers in 2004 was 721. Of these, 203 had a monthly average of 1-25 employees but may involve a larger number of individuals given the temporary nature of employment provided.

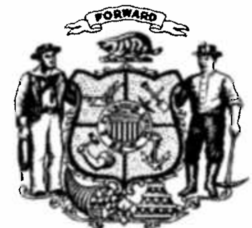
There are no reporting, bookkeeping, or other procedures required for compliance with the proposed rule and no professional skills are required. The proposed rule was developed in consultation with the temporary help industry and reflects current best practices in the industry. It is not expected to qualify or disqualify more claimants of employers following these practices.

Analysis and supporting documents used to determine effect on small business. There is no data available that allows the Department to accurately determine the number of temporary help employers that meet the definition of small business in s. 227.114 (1), Stats. The data that is available on a business entity's number of employees is from the Quarterly Census of Employment and Wages (QCEW) program, which is based on UI reports and Multiple Worksite Reports (MWR). When available, MWRs provide a disaggregation of data. The data does not identify if a business is independently owned and operated, if employees are full-time or part-time, or if a business is dominant in its field.

The Department requested information on the number of temporary help employers that have gross annual sales of less than $5 million from the Department of Revenue, but DOR was unable to provide it.

Agency contact person. Daniel LaRocque, Director, UI Bureau of Legal Affairs. (608) 267-1406; daniel.larocque@dwd.state.wi.us.

WISCONSIN STATE LEGISLATURE



Packet

Clearinghouse Rule 06-032

State of Wisconsin

Department of Workforce Development
Unemployment Insurance Division

Unemployment Insurance and Temporary Help Employers
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Summary of proposed rule. For the purpose of unemployment insurance, an employment relationship normally ends when an employee is laid off without a definite return-to-work date, even if recall is anticipated. If a subsequent offer is refused, it is considered a refusal of new work under s. 108.04 (8), Stats. The employment relationship between a temporary help agency and its employees does not follow the patterns that apply to most other employment relationships. In the temporary help industry, it is common for employees to be assigned to a series of assignments at different locations with different duties, wages, and other conditions. It is also common for these assignments to end with little or no notice to either the employee or the employer. While the parties may fully intend to continue the relationship, the short notice that an assignment has ended may require that a short period of time pass before the employer is able to send the employee to the next assignment. This proposed rule establishes standards for determining whether the employment relationship continues or is terminated for the purpose of unemployment insurance benefit eligibility.

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- On or before the end of the first full business day after the end of an assignment, the employee contacts the employer, or the employer contacts the employee, and informs the other that the assignment has ended. The department may waive the requirement for this notice or the deadline, or both, if it determines that the employee's failure to communicate was for good cause and the employer and employee have otherwise acted in a manner consistent with the continuation of the employment relationship.
- On or before the end of the first full business day after the end of an assignment, or on or before the end of the first full business day after the date notice was given under par. (a) if the deadline for the notice was waived, the employer informs the employee that the employer will provide a new assignment that will begin within 7 days of the date the employee is informed of the new assignment and either the employer provides a new assignment that does begin within 7 days or, within that same 7-day period, the employer notifies the employee of a delay in the start of the new assignment or notifies the employee of another assignment that will begin within 7 days of the new notice and the delayed or other assignment does begin within those 7 days.
- The assignment offered by the employer meets the conditions under which the individual offered to work, including the type of work, rate of pay, days and hours of availability, distance willing to travel to work, and available modes of transportation, as set forth in the individual's written application for employment with the employer submitted prior to the first assignment, or as subsequently amended by mutual agreement. The employer has the burden of proof to show that the assignment meets these requirements.

Chapter 108, Stats., provides that an employee is ineligible for unemployment insurance if the employee voluntarily separated from the employment, unless certain exceptions apply. Under the proposed rule, the employment relationship between a temporary help employer and the employee is considered to be voluntarily separated by the employee when any of the following occur:

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Agency contact person. Daniel LaRocque, Director, UI Bureau of Legal Affairs. (608) 267-1406; daniel.larocque@dwd.state.wi.us.

Place where comments are to be submitted and deadline for submission. Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946 or elaine.pridgen@dwd.state.wi.us. The comment deadline is May 3, 2006.

SECTION 1. Chapter DWD 133 is created to read:

Chapter DWD 133

TEMPORARY HELP EMPLOYERS

DWD 133.001 Definitions (1) Except as provided in sub. (2) and unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in this chapter:

(a) "Assignment" means work assigned by an employer to an employee to be performed for a client company of the employer. An assignment ends when it is completed or when the employee is removed from the assignment.

(b) "Client company" means an entity that contracts with an employer for the employer to provide labor for a determinate or indeterminate time.

(c) "Employer" has the same meaning given "temporary help company," in s. 108.02 (24m), Stats., and does not include a "professional employer organization" as defined in s. 108.02 (21e), Stats.

Note: Section 108.02 (24m), Stats., provides that "temporary help company" means "an entity which contracts with a client to supply individuals to perform services for the client on a temporary basis to support or supplement the workforce of the client in situations such as personnel absences, temporary personnel shortages, and workload changes resulting from seasonal demands or special assignments or projects, and which, both under contract and in fact:

(a) Negotiates with clients for such matters as time, place, type of work, working conditions, quality, and price of the services;

(b) Determines assignments or reassignments of individuals to its clients, even if the individuals retain the right to refuse specific assignments;

(c) Sets the rate of pay of the individuals, whether or not through negotiation;

(d) Pays the individuals from its account or accounts; and

(e) Hires and terminates individuals who perform services for the clients."

DWD 133.01 Purpose. The purpose of this chapter is to recognize that the employment relationship between a temporary help employer and an employee is, in

limited circumstances, unlike that of other employment relationships. An employee of a temporary help employer commonly performs multiple assignments for one or more client companies. An assignment may end with little or no advance notice. While the employer and employee may intend to continue the employment relationship, the employer may not immediately be able to provide a new assignment to the employee. This chapter establishes standards for determining whether the employment relationship continues or is terminated for the purpose of unemployment insurance benefit eligibility.

DWD 133.02 Employment relationship. (1) CONTINUATION OF EMPLOYMENT RELATIONSHIP. When an assignment ends, the employment relationship between the employer and the employee shall be considered a continuing relationship if all of the following conditions are met:

(a) On or before the end of the first full business day after the end of the assignment, the employee contacts the employer, or the employer contacts the employee, and informs the other that the assignment has ended. The department may waive the requirement for this notice or the deadline, or both, if it determines that the employee's failure to communicate was for good cause and the employer and employee have otherwise acted in a manner consistent with the continuation of the employment relationship.

(b) On or before the end of the first full business day after the end of the assignment, or on or before the end of the first full business day after the date notice was given under par. (a) if the deadline for the notice was waived, the employer informs the employee that the employer will provide a new assignment that will begin within 7 days of the date the employee is informed of the new assignment and any of the following occur:

1. The employer provides a new assignment that does in fact begin within 7 days from the date of the notice under par (a).

2. The new assignment does not begin within the 7-day period specified in par. (a), but, within that same 7-day period, the employer notifies the employee of a delay in the start of the new assignment or notifies the employee of another assignment that will begin within 7 days of the notice of the delayed or other assignment. The delayed or other assignment does in fact begin within 7 days from the date that the employer notified the employee of the assignment.

(c) The assignment offered by the employer meets the conditions under which the individual offered to work, including the type of work, rate of pay, days and hours of availability, distance willing to travel to work, and available modes of transportation, as set forth in the individual's written application for employment with the employer submitted prior to the first assignment, or as subsequently amended by mutual agreement. The employer shall have the burden of proof to show that the assignment meets the requirements of this paragraph.

(2) SEPARATION OF EMPLOYMENT BY EMPLOYER. If the employment relationship does not continue under sub. (1), the employment shall be considered separated by the employer unless the employee has voluntarily separated from the employment under sub. (3).

(3) SEPARATION OF EMPLOYMENT BY EMPLOYEE. (a) The employee voluntarily separates from the employment when any of the following occur:

1. The employee fails to notify the employer that an assignment has ended if the employer's policy requires such notification and the employee had notice of this policy

prior to the end of the assignment, provided that the employer is not aware that the assignment has ended.

2. The employee refuses an assignment while the employment relationship continues.

3. The employee fails to respond to an offer of work by the employer within a reasonable time period, while the employment relationship continues.

4. The employer is unable to communicate an offer of work to the employee because of the employee's failure to provide the employer with a correct address, telephone number, or other contact information while the employment relationship continues.

(b) Nothing in this chapter shall preclude the application of other provisions of ch. 108, Stats., to determine whether the employee separated from the employment.

DWD 133.03 Treatment of time between assignments. The employee shall be eligible for unemployment insurance benefits while the employment relationship continues between assignments pursuant to s. DWD 133.02 (1), if the employee is otherwise qualified.

DWD 133.04 Relationship following termination. When the employment relationship terminates, the employee's application for employment shall expire. If the employee returns to work for the employer, a new application for employment shall be required for this chapter to be applicable. If the employee agrees in writing, the original application may be treated as a new application for employment.

SECTION 2. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22(2)(intro), Stats.

Date?

LCRC
FORM 2

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE **06-032**

AN ORDER to create chapter DWD 133, relating to unemployment insurance and temporary help employers and affecting small businesses.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

03-31-2006 RECEIVED BY LEGISLATIVE COUNCIL.

04-26-2006 REPORT SENT TO AGENCY.

RNS:DLS

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

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

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

   Comment Attached YES ☐ NO ☑

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

   Comment Attached YES ☑ NO ☐

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

   Comment Attached YES ☐ NO ☑

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

   Comment Attached YES ☐ NO ☑

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

   Comment Attached YES ☐ NO ☑

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

   Comment Attached YES ☐ NO ☑

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

   Comment Attached YES ☐ NO ☑

Date?

WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-032

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

a. In s. DWD 133.001, in sub. (1) and (2), is it necessary to add "and unless the context clearly indicates a different meaning"? Are there instances in this new chapter where the context of the defined terms clearly indicates a different meaning? If not, this phrase can be deleted. Also, since the second sentence in the definition of "Assignment" in sub. (2) (a) is a substantive provision that should not be part of the definition; it should be placed outside the definitions section. Section DWD 133.001 could be restructured and rewritten as follows:

> **DWD 133.001 General provisions.** **(1)** DEFINITIONS. (a) Except under par. (b) and unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.
>
> (b) Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in this chapter:
>
> 1. "Assignment" means work assigned...for a client company of the employer.
>
> 2. "Client company" means....
>
> 3. "Employer" has the same meaning....
>
> **(2)** END OF ASSIGNMENT. For purposes of this chapter, an assignment ends when the employee completes it or when the employee is removed from the assignment.

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

b. Since the term "employee" is so significant to, and is used throughout, the new chapter, it appears that the definitions section should include a definition of "employee" (e.g., "Employee" means a temporary help employee--with any necessary cross-references to the definition of "temporary help employee" elsewhere in the code or the statutes).

c. In s. DWD 133.02 (1) (intro.), "the employer and the employee" should be "an employer and an employee." In par. (a), the first part of the last sentence should read: "The department may waive the requirement for the deadline or notice, or both, if it determines that the employee's failure to so contact the employer was for good cause...." In par. (b) 1., "begins" should replace "does in fact begin." In par. (b) 2., second sentence, it appears that "shall" should be substituted for "does in fact." In sub. (3) (a) (intro.), "An employee" should replace "The employee." In par. (a) 4., "his or her correct address" should replace "a correct address."

d. In s. DWD 133.03, "The employee" should be "An employee." Also, "for those benefits" should be inserted after "otherwise qualified."

e. The first sentence of s. DWD 133.04 would be clearer if it read: "When an employee's employment relationship with an employer terminates, his or her application for employment with that employer shall expire."

Report From Agency

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The Wisconsin Department of Workforce Development proposes an order to create Chapter DWD 133, relating to unemployment insurance and temporary help employers and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.14 (2) and 227.11, Stats.
Statutes interpreted: Sections 108.04 (7), 108.04 (8)
Related statutes: Sections 108.02 (24m) and 108.065, Stats.

Explanation of agency authority. Section 108.14 (2), Stats., provides that the Department may adopt and enforce all rules which it finds necessary or suitable to carry out Chapter 108, Stats., regarding unemployment insurance. Section 108.04 (7), Stats., provides that if an employee terminates work with an employing unit, the employee is ineligible for unemployment insurance except under certain conditions. Section 108.04 (8), Stats., provides that if an employee fails, without good cause, to accept suitable work when offered, the employee is ineligible for unemployment insurance except under certain conditions.

Summary of proposed rule. For the purpose of unemployment insurance, an employment relationship normally ends when an employee is laid off without a definite return-to-work date, even if recall is anticipated. If a subsequent offer is refused, it is considered a refusal of new work under s. 108.04 (8), Stats. The employment relationship between a temporary help agency and its employees does not follow the patterns that apply to most other employment relationships. In the temporary help industry, it is common for employees to be assigned to a series of assignments at different locations with different duties, wages, and other conditions. It is also common for these assignments to end with little or no notice to either the employee or the employer. While the parties may fully intend to continue the relationship, the short notice that an assignment has ended may require that a short period of time pass before the employer is able to send the employee to the next assignment. This proposed rule establishes

standards for determining whether the employment relationship continues or is terminated for the purpose of unemployment insurance benefit eligibility.

When an assignment from a temporary help employer ends, an employee is eligible for unemployment insurance benefits while the employment relationship continues between assignments, if he or she is otherwise qualified. Under the proposed rule, the employment relationship between a temporary help employer and the employee is considered to be a continuing relationship if all of the following conditions are met:

- Prior to the end of the first full business day after the end of the assignment, the employee contacts the employer, or the employer contacts the employee, and informs the other that the assignment has ended or will end on a certain date. The department may waive the requirement for the deadline or notice, or both, if it determines that the employee's failure to so contact the employer was for good cause and the employer and employee have otherwise acted in a manner consistent with the continuation of the employment relationship.
- Prior to the end of the first full business day after the end of the assignment, or prior to the end of the first full business day after the date the notice of the end of the assignment was given if the deadline for the notice was waived, the employer informs the employee that the employer will provide a new assignment that will begin within 7 days and either 1) the employer provides a new assignment that begins within 7 days; 2) a new assignment does not begin in 7 days but the employer notifies the employee that the start of the assignment will be delayed for a period not to exceed an additional 7 days and the delayed assignment begins within these 7 days; or 3) a new assignment does not begin within 7 days but the employer notifies the employee that the employer will provide another assignment that will begin within 7 days and the assignment does begin.
- The assignment offered by the employer meets the conditions under which the individual offered to work, including the type of work, rate of pay, days and hours of availability, distance willing to travel to work, and available modes of transportation, as set forth in the individual's written application for employment with the employer submitted prior to the first assignment, or as subsequently amended by mutual agreement. The employer has the burden of proof to show that the assignment meets these requirements. If the employer offers an assignment that does not conform to these requirements, the employment relationship ends as a separation by the employer.

Chapter 108, Stats., provides that an employee is ineligible for unemployment insurance if the employee voluntarily separated from the employment, unless certain exceptions apply. Under the proposed rule, the employment relationship between a temporary help employer and the employee is considered to be voluntarily separated by the employee when any of the following occur:

- The employee fails to notify the employer that an assignment has ended if the employer's policy requires such notification and the employee had notice of this policy prior to the end of the assignment, provided that the employer is not aware that the assignment has ended.

- The employee refuses an assignment while the employment relationship continues.
- The employee fails to respond to an offer of work by the employer within a reasonable time period, while the employment relationship continues.
- The employer is unable to communicate an offer of work to the employee because of the employee's failure to provide the employer with a correct address, telephone number, or other contact information while the employment relationship continues.
- Any other circumstances that would be considered separation by the employee under Chapter 108, Stats.

If an employment relationship does not continue under the terms of the proposed rule, the employment shall be considered separated by the employer unless the employee has voluntarily separated from the employment as provided in the list above or any other provision of Chapter 108, Stats.

When the employment relationship terminates, the employee's application for employment shall expire. If the employee returns to work for the employer, a new application for employment will be required for this chapter to be applicable. If the employee agrees in writing, the original application may be treated as a new application for employment.

Summary of factual data and analytical methodologies. In 1994 the Department responded to concerns expressed by temporary help employers and adopted a policy that considers the employment relationship between a temporary help employer and its employee to continue for a maximum of 14 days after the last day of work while the employer looks for another assignment for the employee, provided the employer guaranteed the employee an assignment to begin within that time period. Refused assignments during that 14-day extension period are considered separations by the employee.

The proposed Chapter DWD 133 codifies the informal policy that is currently in place, with minor adjustments. The proposed rule provides for an extension of the employment relationship while the employer finds a new assignment for the employee, provided that future offers of work are within the confines of the application for employment. The application for employment will be treated as a quasi-employment contract. This provides protection for the employer and the employee as both parties are put on notice as to what type of work will continue the employment relationship. If a subsequent assignment made within the confines of the application for employment is refused during the extension period, the employee is considered to have separated because the employment relationship is considered to still exist.

Comparison with federal law. There is no federal unemployment insurance law that specifically covers treatment of employees of temporary help companies.

Comparison with rules in adjacent states. Minnesota. An individual who within 5 calendar days after completion of a suitable temporary job assignment fails without good cause to affirmatively request an additional job assignment or refuses without good cause an additional suitable job assignment offered shall be considered to have quit employment. This provision applies only if at the beginning of employment with the temporary help company, the applicant signed and was provided a copy of a separate document that informed the applicant of this paragraph and that unemployment benefits may be affected.

Iowa. An individual who fails without good cause to notify the temporary help company of the completion of an assignment and seek reassignment within 3 working days shall be considered to have voluntary quit employment, unless the individual was not advised in writing of the duty to notify the temporary help company of the completion of an assignment.

Michigan. An individual is disqualified from receiving benefits if the temporary help company provided the employee with written notice before the employee began performing services stating that within 7 days after completion of an assignment the employee must notify the temporary help company and failure to provide notice of completion of an assignment constitutes a voluntary quit that will affect the employee's eligibility for unemployment insurance and the employee did in fact not notify the temporary help company of completion of the assignment within 7 days.

Illinois. There is a rebuttable presumption that an individual is not actively seeking work if the individual was last employed by a temporary help company and the temporary help company alleges that during the week for which the individual claimed benefits, he or she did not contact the temporary help company for an assignment. The presumption is rebutted if the individual shows that he or she did contact the temporary help company or that he or she had good cause for failure to contact the temporary help company for an assignment.

Effect on small business. The proposed rule will affect temporary help employers, some of which are small businesses. Using the best data available, the Department estimates that the number of temporary help employers in 2004 was 721. Of these, 203 had a monthly average of 1-25 employees but may involve a larger number of individuals given the temporary nature of employment provided.

There are no reporting, bookkeeping, or other procedures required for compliance with the proposed rule and no professional skills are required. The proposed rule was developed in consultation with the temporary help industry and reflects current best practices in the industry. It is not expected to qualify or disqualify more claimants of employers following these practices.

Analysis and supporting documents used to determine effect on small business. There is no data available that allows the Department to accurately determine the number of temporary help employers that meet the definition of small business in s. 227.114 (1), Stats. The data that is available on a business entity's number of employees is from the Quarterly Census of Employment and Wages (QCEW) program, which is based on UI reports and Multiple Worksite Reports (MWR). When available, MWRs provide a disaggregation of data. The data does not identify if a business is independently owned

and operated, if employees are full-time or part-time, or if a business is dominant in its field.

The Department requested information on the number of temporary help employers that have gross annual sales of less than $5 million from the Department of Revenue, but DOR was unable to provide it.

Agency contact person. Daniel LaRocque, Director, UI Bureau of Legal Affairs. (608) 267-1406; daniel.larocque@dwd.state.wi.us.

Place where comments are to be submitted and deadline for submission. Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946 or elaine.pridgen@dwd.state.wi.us. The comment deadline is May 3, 2006.

Chapter DWD 133

TEMPORARY HELP EMPLOYERS

DWD 133.001 Definitions. (1) Except as provided in sub. (2) and unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

(2) Notwithstanding ch. DWD 100 and unless the context clearly indicates a different meaning, in this chapter:

(a) "Assignment" means work assigned by an employer to an employee to be performed for a client company of the employer. An assignment ends when it is completed or when the employee is removed from the assignment.

(b) "Client company" means an entity that contracts with an employer for the employer to provide labor for a determinate or indeterminate time.

(c) "Employer" has the same meaning given "temporary help company," in s. 108.02 (24m), Stats., and does not include a "professional employer organization" as defined in s. 108.02 (21e), Stats.

Note: Section 108.02 (24m), Stats., provides that "temporary help company" means "an entity which contracts with a client to supply individuals to perform services for the client on a temporary basis to support or supplement the workforce of the client in situations such as personnel absences, temporary personnel shortages, and workload changes resulting from seasonal demands or special assignments or projects, and which, both under contract and in fact:

(a) Negotiates with clients for such matters as time, place, type of work, working conditions, quality, and price of the services;

(b) Determines assignments or reassignments of individuals to its clients, even if the individuals retain the right to refuse specific assignments;

(c) Sets the rate of pay of the individuals, whether or not through negotiation;

(d) Pays the individuals from its account or accounts; and

(e) Hires and terminates individuals who perform services for the clients."

DWD 133.01 Purpose. The purpose of this chapter is to recognize that the employment relationship between a temporary help employer and an employee is, in

limited circumstances, unlike that of other employment relationships. An employee of a temporary help employer commonly performs multiple assignments for one or more client companies. An assignment may end with little or no advance notice. While the employer and employee may intend to continue the employment relationship, the employer may not immediately be able to provide a new assignment to the employee. This chapter establishes standards for determining whether the employment relationship continues or is terminated for the purpose of unemployment insurance benefit eligibility.

DWD 133.02 Employment relationship. (1) CONTINUATION OF EMPLOYMENT RELATIONSHIP. When an assignment ends, the employment relationship between an employer and an employee shall be considered a continuing relationship if all of the following conditions are met:

(a) Prior to the end of the first full business day after the end of the assignment, the employee contacts the employer, or the employer contacts the employee, and informs the other that the assignment has ended or will end on a certain date. The department may waive the requirement for the deadline or notice, or both, if it determines that the employee's failure to so contact the employer was for good cause and the employer and employee have otherwise acted in a manner consistent with the continuation of the employment relationship.

(b) Prior to the end of the first full business day after the end of the assignment, or prior to the end of the first full business day after the date notice was given under par. (a) if the deadline for the notice was waived, the employer informs the employee that the employer will provide a new assignment that will begin within 7 days and any of the following occur:

1. The employer provides a new assignment that begins within 7 days of the date of the notice.

2. A new assignment does not begin within the 7-day period specified in par. (b) (intro.), but within that same 7-day period, the employer notifies the employee that the start of the assignment will be delayed for a period not to exceed an additional 7 days. The delayed assignment begins within 7 days of the date that the employer notified the employee of the delay.

3. A new assignment does not begin within the 7-day period specified in par. (b) (intro.), but within that same 7-day period, the employer notifies the employee that the employer will provide another assignment that will begin within 7 days. This assignment begins within 7 days of the date that the employer notified the employee of the assignment.

(c) The assignment offered by the employer meets the conditions under which the individual offered to work, including the type of work, rate of pay, days and hours of availability, distance willing to travel to work, and available modes of transportation, as set forth in the individual's written application for employment with the employer submitted prior to the first assignment, or as subsequently amended by mutual agreement. The employer shall have the burden of proof to show that the assignment meets the requirements of this paragraph. If the employer offers an assignment that does not conform to the requirements of this paragraph, the employment relationship ends under sub. (2).

(2) SEPARATION OF EMPLOYMENT BY EMPLOYER. If the employment relationship does not continue under sub. (1), the employment shall be considered

separated by the employer unless the employee has voluntarily separated from the employment under sub. (3).

(3) SEPARATION OF EMPLOYMENT BY EMPLOYEE. (a) An employee voluntarily separates from the employment when any of the following occur:

1. The employee fails to notify the employer that an assignment has ended if the employer's policy requires such notification and the employee had notice of this policy prior to the end of the assignment, provided that the employer is not aware that the assignment has ended, and provided that the notice requirement was not waived under sub. (1) (a).

2. The employee refuses an assignment while the employment relationship continues.

3. The employee fails to respond to an offer of work by the employer within a reasonable time period, while the employment relationship continues.

4. The employer is unable to communicate an offer of work to the employee because of the employee's failure to provide the employer with his or her correct address, telephone number, or other contact information while the employment relationship continues.

(b) Nothing in this chapter shall preclude the application of other provisions of ch. 108, Stats., to determine whether the employee separated from the employment.

DWD 133.03 Treatment of time between assignments. An employee shall be eligible for unemployment insurance benefits while the employment relationship continues between assignments pursuant to s. DWD 133.02 (1), if the employee is otherwise qualified for those benefits.

DWD 133.04 Relationship following termination. When an employee's employment relationship with an employer terminates, his or her application for employment with that employer shall expire. If the employee returns to work for the employer, a new written application for employment shall be required for this chapter to be applicable. If the employee agrees in writing, the original application may be treated as a new application for employment.

SECTION 2. INITIAL APPLICABILITY. This rule first applies to an action or inaction by an employee or employer that may affect the employee's eligibility for benefits under this chapter beginning with the Sunday following the effective date of this chapter.

SECTION 3. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

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State of Wisconsin
Department of Workforce Development

Rule Analysis for Legislative Review

Proposed Rules Relating to Unemployment Insurance and Temporary Help Employers
Chapter DWD 133
CR 06-032

Basis and Purpose of the Proposed Rules

For the purpose of unemployment insurance, an employment relationship normally ends when an employee is laid off without a definite return-to-work date, even if recall is anticipated. If a subsequent offer is refused, it is considered a refusal of new work. The employment relationship between a temporary help agency and its employees does not follow the patterns that apply to most other employment relationships. In the temporary help industry, it is common for employees to be assigned to a series of assignments at different locations with different duties, wages, and other conditions. It is also common for these assignments to end with little or no notice to either the employee or the employer. While the parties may fully intend to continue the relationship, the short notice that an assignment has ended may require that a short period of time pass before the employer is able to send the employee to the next assignment. This proposed rule establishes standards for determining whether the employment relationship continues or is terminated for the purpose of unemployment insurance benefit eligibility.

Public Hearing Summary

A public hearing was held in Madison on May 1, 2006. A summary of the hearing comments and the department's responses is attached.

Response to Legislative Council Staff Recommendations

The Department's response is attached.

Changes to Analysis Prepared under s. 227.114 (2), Stats.

The Department corrected a cross-reference and made several non-substantive wording changes in the subsection on continuation of the employment relationship. Also, one minor substantive change was added to this subsection for clarity:

-- If a temporary help employer offers an assignment that does not conform to the conditions under which the employee offered to work, the employment relationship ends as a separation by the employer.

Final Regulatory Flexibility Analysis

The proposed rule affects small businesses but does not have a significant economic impact on a substantial number of small businesses.

Department Contacts

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266-7564

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SECTION 1. Chapter Comm 131 is created to read:

Chapter Comm 131
DIESEL TRUCK IDLING REDUCTION GRANTS

Comm 131.10 Purpose. Pursuant to s. 560.125 (5m), Stats., this chapter sets forth the requirements for applying for, receiving, and using grants for purchasing and field testing diesel truck idling reduction units.

Comm 131.20 Definitions. In this chapter:

(1) The definitions in s. 560.125 (1) , Stats., shall apply.

Note: See Appendix for a reprint of s. 560.125 (1), Stats., and the statute sections referenced in that section.

(2) "Department" means the department of commerce.

(3) "Headquartered in this state," as referenced under s. Comm 131.30 (1), means the applicant's principal central administrative office is located in Wisconsin, or the applicant's business pays at least 80% of its payroll to employees employed in Wisconsin.

Comm 131.30 Eligibility. (1) ELIGIBLE APPLICANTS. (a) Only applicants meeting all of the eligibility criteria in s. 560.125 (3), Stats., and in par. (b) may receive grants under this chapter.

(b) 1. The applicant is not failing to comply with any conditions imposed by the department on any previous grant received under this chapter.

2. If requested by the department, the applicant agrees to pay a percentage of the eligible costs that exceeds the 30 percent specified in s. 560.125 (3) (c), Stats.

(2) ELIGIBLE COSTS. Grants awarded under this chapter shall only be used to cover costs that are established as eligible in s. 560.125 (4) (a) and (b), Stats.

Note: See Appendix for a reprint of s. 560.125 (3) and (4) (a) and (b), Stats.

Comm 131.40 Applications for grants. Every application for a grant under this chapter shall be submitted to the department on a fully completed, valid form provided by the department.

Note: See Appendix for the version of the application form that became valid upon publication of this chapter. Any subsequent versions will become valid upon posting at the department's Web site at www.commerce.wi.gov., and can be accessed through links there for the diesel truck idling reduction grant program.

Comm 131.50 Awarding of grants. (1) LIMITS. Every grant awarded under this chapter shall comply with the limits established in s. 560.125 (4) (c), (d), and (f), Stats.

Note: See Appendix for a reprint of s. 560.125 (4) (c), (d), and (f), Stats.

Note: As specified in s. 560.125 (2), Stats., the department's authority to award grants under this chapter expires on June 30, 2011.

(2) TRUCK TRACTORS WITHOUT SLEEPER CABS. The department may refuse to award a grant for purchasing and installing an idling reduction unit on a truck tractor that does not have a sleeper berth.

(3) ALLOCATION FOR SMALL FLEETS. The department may annually allocate up to 25 percent of the grant funding under this chapter, for awarding only to applicants who own and operate 50 or fewer truck tractors.

(4) PREFERENCE FOR FLEETS WITHOUT PREVIOUS AWARDS. The department may preferentially direct funding to an applicant who owns a fleet for which no previous grant has been awarded under this chapter.

(5) PRORATING AWARDS. The department may set cutoff dates for accepting the applications specified in s. Comm 131.40, and then prorate the awards to the applicants if the total funding requested in the applications exceeds the available revenue.

(6) CONDITIONS. (a) *General.* Each recipient of a grant awarded under this chapter shall comply with any corresponding conditions imposed by the department, as authorized under s. 560.125 (4) (f), Stats.

(b) *Reports.* Each recipient of a grant awarded under this chapter shall submit six- and twelve-month post-installation reports in a format prescribed by the department. These reports shall include evidence of being derived from on-board, electronically recorded data.

Note: As required by s. 560.125 (4) (g), Stats., the department will withhold payment of at least 20 percent of any grant under this chapter until the recipient has complied with the conditions of the grant, as established by the department, including providing to the department information relating to the operation and performance of each idling reduction unit covered by the grant.

Note: As required by s. 560.125 (5), Stats., the department will collect information from recipients of grants under this section relating to the operation and performance of idling reduction units. The department will also summarize the information collected and make it available to common motor carriers, contract motor carriers, and private motor carriers, on the department's Web site at www.commerce.wi.gov., through links there for the diesel truck idling reduction grant program.

Chapter Comm 131

Appendix

The material contained in this appendix is for informational purposes only, and is numbered to correspond to the number of the rule, as the rule appears in the text of the code.

A–131.20 Reprint of s. 560.125 (1), Stats., and the statute sections (in italics) referenced in that section. "**560.125 (1)** (a) 'Common motor carrier' has the meaning given in s. 194.01 (1). *["194.01 (1) 'Common motor carrier' means any person who holds himself or herself out to the public as willing to undertake for hire to transport passengers by motor vehicle between fixed end points or over a regular*

route upon the public highways or property over regular or irregular routes upon the public highways. The transportation of passengers in taxicab service or in commuter car pool or van pool vehicles with a passenger-carrying capacity of less than 16 persons or in a school bus under s. 120.13 (27) shall not be construed as being that of a common motor carrier."]

(b) 'Contract motor carrier' has the meaning given in s. 194.01 (2). *["194.01 (2) 'Contract motor carrier' means any person engaged in the transportation by motor vehicle over a regular or irregular route upon the public highways of property for hire."]*

(c) 'Idling reduction unit' means a device that is installed on a diesel truck to reduce the long-duration idling of the truck by providing heat, air conditioning, or electricity to the truck while the truck is stationary and the main drive engine of the truck is not operating.

(d) 'Post-1998 diesel truck engine' means a heavy-duty highway diesel engine that complies with the air pollutant emission standards promulgated by the federal environmental protection agency under 42 USC 7521 for engine model year 1998 or a later engine model year.

(e) 'Private motor carrier' has the meaning given in s. 194.01 (11). *["194.01 (11) 'Private motor carrier' means any person except a common or contract motor carrier engaged in the transportation of property by motor vehicle other than an automobile or trailer used therewith, upon the public highways."]*

(f) 'Truck tractor' has the meaning given in s. 340.01 (73)." *["340.01 (73) 'Truck tractor' means a motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn."]*

A–131.30 and 131.50 Reprint of s. 560.125 (3) and (4) (a) to (d) and (f), Stats. "560.125 (3) ELIGIBLE APPLICANTS. An applicant is eligible for a grant under this section only if all of the following apply:

(a) The applicant is a common motor carrier, contract motor carrier, or private motor carrier that transports freight.

(b) The applicant is headquartered in this state.

(c) The applicant pays 30 percent of the eligible costs for each idling reduction unit covered by a grant under this section without the use of grants, loans, or other financial assistance from this state or from a local governmental unit in this state.

(d) The applicant agrees to collect information relating to the operation and performance of each idling reduction unit covered by a grant under this section, as required by the department, and to report that information to the department.

(4) GRANTS. (a) Except as provided in par. (b), the costs that an applicant has incurred or will incur to purchase and install an idling reduction unit on a truck tractor that is owned and operated by the applicant and that has a post-1998 diesel truck engine are eligible costs under this section if the use of the idling reduction unit will result, in the aggregate, in a decrease in the emissions of one or more air contaminants, as defined in s. 285.01 (1), from the truck tractor on which the idling reduction unit is installed or in a decrease in the use of energy by the truck tractor on which the idling reduction unit is installed.

(b) The following costs are not eligible costs:

1. The cost of shipping an idling reduction unit from the manufacturer to the facility where the idling reduction unit will be installed on the truck tractor.

2. The cost of operating an idling reduction unit.

3. The cost of maintaining an idling reduction unit.

(c) Subject to par. (d), the department may make a grant under this section of 70 percent of the eligible costs for not more than the following number of idling reduction units:

1. If the applicant owns and operates one truck tractor with a post-1998 diesel truck engine, one.

2. If the applicant owns and operates at least 2 but not more than 10 truck tractors with post-1998 diesel truck engines, 2.

3. If the applicant owns and operates at least 11 but not more than 50 truck tractors with post-1998 diesel truck engines, the greater of the following:

a. Two.

b. Ten percent of the number of truck tractors with post-1998 diesel truck engines that the applicant owns and operates.

4. If the applicant owns and operates at least 51 but not more than 250 truck tractors with post-1998 diesel truck engines, the greater of the following:

a. Six.

b. Seven percent of the number of truck tractors with post-1998 diesel truck engines that the applicant owns and operates.

5. If the applicant owns and operates at least 251 but not more than 500 truck tractors with post-1998 diesel truck engines, the greater of the following:

a. Eighteen.

b. Six percent of the number of truck tractors with post-1998 diesel truck engines that the applicant owns and operates.

6. If the applicant owns and operates at least 501 but not more than 2,500 truck tractors with post-1998 diesel truck engines, the greater of the following:

a. Twenty-five.

b. Five percent of the number of truck tractors with post-1998 diesel truck engines that the applicant owns and operates.

7. If the applicant owns and operates more than 2,500 truck tractors with post-1998 diesel truck engines, 3 percent of the number of truck tractors with post-1998 diesel truck engines that the applicant owns and operates.

(d) In any fiscal year, the department may not pay to any one applicant more than 20 percent of the amount appropriated under s. 20.143 (3) (sm) for the fiscal year.

(f) The department shall require that applicants receiving grants under this section covering more than one idling reduction unit purchase idling reduction units of more than one type and from more than one manufacturer. The department may impose other conditions on the receipt of grants."

A–131.40 Grant application form. The following pages contain the department's application form for applying for the grants awarded under this chapter.

(END)

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EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after publication in the Wisconsin administrative register.

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File reference: Diesel Idling/rules 2006 LR2

DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE

Clearinghouse Rule Number: 06-034 | Hearing Location: Madison

Rule Number: Comm 131 | Hearing Date: May 15, 2006

Relating to: Diesel truck idling reduction grant program

Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Oral	Patrick George Transport Refrigeration Madison, Wisconsin	Supports the grant program; and states the 25% allocation for smaller fleets should be kept or increased, to avoid having all of the grant funds go the larger fleets. Funding the smaller fleets is needed in order to test the grant program across the broad range of companies, and getting more people involved in the program will benefit the program.	Support is noted.
Oral	Tom Howells Wisconsin Motor Carriers Association Madison, Wisconsin	1. Supports the grant program; and appreciates the Department's efforts to obtain and utilize input from the industry, in developing the grant program and corresponding rules. Agrees with allocating funds for smaller fleets and targeting funds away from truck tractors without sleeper cabs. States the flexibility in the rules will be helpful in making adjustments in the program, and the proposed prorating indicates that any excess demand for the grant funding will be actively addressed. 2. Understands that the statutes require grant applicants to own and operate the corresponding truck tractors, but hopes that during administration of the program, the Department will focus on the ownership. Believes the program will benefit from getting as many people involved as possible, and focusing too much on operation could conflict with that objective. States the proposed application form is fairly simple and straightforward, and easy to understand. Looks forward to working with the Department further as the program evolves.	1.Support is noted. 2. As currently written, section 560.125 (4) of the Wisconsin Statutes allows the Department to issue grants in this program only to an applicant who both owns and operates a diesel truck tractor.
Oral	Marc Bentley Wisconsin Motor Carriers Association, Schneider National, and Marten Transport Madison, Wisconsin	1. Supports the grant program and appreciates the Department's efforts to date to accommodate the industry. Anticipates continuing that collaboration in the future, such as during efforts to renew or increase subsequent biennial appropriations for the program. 2. States the program needs to recognize that a number of motor carriers who meet the proposed criteria for an eligible applicant do not hold title to the vehicle in their own name, but for ease of financing and other reasons, instead lease the vehicle on a long-term basis from a commonly owned or controlled affiliate. States the definition of applicant should include motor carriers headquartered in Wisconsin who lease vehicles on a long-term basis from a commonly owned or controlled affiliate – or alternatively, the term ownership, for the purposes of the grant program, should include vehicles under a long-term lease to a motor carrier from a commonly owned or controlled affiliate. 3. Believes the tier allocation in the enabling legislation would have adequately distributed the initially proposed annual appropriation of $2 to 3	1. Support is noted. 2. As currently written, section 560.125 (4) of the Statutes allows the Department to issue grants in this program only to an applicant who both owns and operates a diesel truck tractor. 3. The Department originally proposed allocating up to 35% of the grant funding to small fleets, and then reduced

DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE

Clearinghouse Rule Number: 06-034		Hearing Location: Madison	
Rule Number: Comm 131		Hearing Date: May 15, 2006	
Relating to: Diesel truck idling reduction grant program			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
		million across the range of fleet sizes in the industry, and understands there is concern that the actual appropriation of $1 million may be absorbed entirely by the larger fleets. Understands that small fleets have a need, but believes that the resulting proposed allocation of 25 percent to smaller fleets is too high and should be reduced. Indicates smaller fleets are more likely to be running older engines and older equipment. Suggests a compromise of phasing in the small-fleet allocation, by beginning with 10 percent during the first year, and then increasing it to 15 or 20 percent. Believes having the small-fleet allocation too high in the first year will result in a large number of applications from small fleets, such as 1 or 2 trucks, which would be an administrative nightmare for the Department. Starting the program with the allocation at 10 percent would enable the Department to manage the program more effectively, which would improve the potential for increasing the $1 million appropriation to $4 or $5 million, after 3 or 4 years. 4. Emphasizes the importance in the grant program of getting credits under the State Implementation Plan (SIP) that the Department of Natural Resources is promulgating. Emissions credits are needed for the Plan's June 2007 target for ozone, and the April 2008 target for PM25. The target pollutants include nitrogen oxides, volatile organic compounds, organic carbon, and sulfur dioxides. The trucking industry is concerned that mobile sources, such as heavy-duty diesel engines will be targeted in the SIP. Indicates the application form and the reporting for the idling reduction grants should include parameters that will accommodate the needs of the DNR, such as how many vehicles travel within the nonattainment zone or its fringe area. Believes trucking companies will cooperate in reporting the emission reductions that result from utilizing the grants. Recommends getting input from the DNR in establishing the application form, the corresponding rules, and other aspects of the grant program so that the trucking industry can get corresponding credits under the SIP.	this allocation to 25% after discussions with the trucking industry. Based on the number of truck tractors operated by the five largest fleets headquartered in Wisconsin, the Department determined that under the tiered criteria in section 560.125 (4) (c) of the Statutes, those five firms could absorb all but $18,000 of the grant funding in the first year, and the ten largest fleets could absorb the remainder. A 10% allocation for small fleets would allow funding only 15 auxiliary power units for small fleets. The Department does not expect that a 25% allocation will disrupt administration of the program. 4. The Department has modified the grant-application form, after obtaining further input from the Department of Natural Resources and the industry, to include the idling time and location data (by county) that will be needed for SIP credits. Also, the draft rules have been modified to require submitting the corresponding reports in a format prescribed by the Department. That format will likewise address the information needed for SIP credits.
Oral and Exhibit 1	Dennis Damman Schneider National, Inc. Green Bay, Wisconsin	1. Supports the grant program, and states Schneider National is committed to assisting the Department in determining an environmentally and economically responsible course of action for the program.	1. Support is noted.

DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE

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		2. States the program needs to recognize that a number of motor carriers who meet the proposed criteria for an eligible applicant do not hold title to the vehicle in their own name, but for ease of financing and other reasons, instead lease the vehicle on a long-term basis from a commonly owned or controlled affiliate. States the definition of applicant should include motor carriers headquartered in Wisconsin who lease vehicles on a long-term basis from a commonly owned or controlled affiliate – or alternatively, the term ownership, for the purposes of the grant program, should include vehicles under a long-term lease to a motor carrier from a commonly owned or controlled affiliate.	2. As currently written, section 560.125 (4) of the Statutes allows the Department to issue grants in this program only to an applicant who both owns and operates a diesel truck tractor.
		3. States electronic baseline data is needed for substantiating idle, engine time, road time and fuel economy, for 1 year prior to the installation of the unit, if the unit is a retrofit installation. New units would report from the date of installation. Reports from engine ECM's, Qualcomm SensorTracs, Tripmaster or other on-board electronic recorders are examples of acceptable electronic reporting formats. Fleet MPG or unit MPG should be 6.2 or higher, and be qualified with electronic data or an engine ECM download, to reward fleets that are environmentally conscious and are already promoting fuel economy and emissions reductions. Electronic reports are needed to avoid receiving speculative data.	3. The application form in the Hearing draft requested information over a 12-month period preceding retrofit installations, or estimates for new installations. The Department has modified the form to request "average" rather than "current" idling time and miles per gallon. The Department will revisit the recommended 6.2 mpg minimum after analyzing data from the initial 6- and 12-month, post-installation reports in the program. The draft rules have been revised to require that the post-installation reports include evidence of being derived from on-board, electronically recorded data.
		4. States that during the evaluation period, the recipients should provide quarterly electronic details on tractor performance after the technology is installed. For each unit installed, a baseline unit without the technology, with similar tractor, engine, driveline, model year, and other specifications, running the same vocation and similar routes, should be used as a benchmark in performance against the tractor with the technology installed, if there is more than one unit. Believes baseline units should be required to be identical or very similar in specifications to the tractor with evaluation equipment installed. Reporting periods for the groups must be identical. Without baseline information, the data variation can be significant. Seasonality, temperature changes and weather conditions have a major impact on MPG and idle. The only accurate way to gauge use and idle reduction is with a comparable group of tractors without the technology. Cost payback models are not accurate without the baseline information.	4. During the first year of the program, the Department will not require each grantee to provide a comparison between a truck tractor with a reduction unit and a similar truck without the same technology. Fleets having that comparison data will be encouraged to submit it.

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		5. States electronic details generated from reports from the engine ECM, Qualcomm SensorTracs, Tripmaster, or other electronic data recorders, should be compiled on both test and baseline vehicles to include (1) engine on time, (2) engine road time, (3) engine idle time, (4) tractor fuel economy, (5) miles traveled, (6) total engine hours, and (7) cost to operate the system, e.g., maintenance, preventive costs and fuel. All class 8 engines 1998 and newer have electronic data recorders through the engine ECM that will provide this engine information.	5. The draft rules have been revised to require submittal of 6- and 12-month post-installation reports in a format prescribed by the department. That format is expected to include the essential elements addressed in this comment.
		6. States operators should be required to complete surveys on ease of operation; maintenance issues and costs; system effectiveness; number of breakdowns, with details; cost of operation; fuel used; and any issues encountered using the system, such as vibration, noise, and noise complaints. These surveys should be completed twice per year: once at the end of winter, and at the end of summer.	6. The Department agrees with this recommendation and plans to include a survey with the final report submitted by the grantee.
		7. States the grant application form should include an additional column to track the number of miles traveled in Wisconsin during the reporting period.	7. Agree. This data will be requested on both the application form and the post-installation reports. Miles traveled in nonattainment areas, if known, will also be requested.
		8. Believes the grant money should be limited to tractors with engine build dates of October 2002 or newer to reward companies that have made investments in the latest emissions technologies.	8. As sections 560.125 (1) (d) and (4) of the Statutes are currently written, engines older than October 2002 are eligible for grant funding, if they comply with the federal emission standards prescribed therein.
		9. Opposes rewarding and accommodating truck owner-operators and small trucking companies (less than fifty trucks) under the program. These truck owners generally own older trucks and keep their trucks longer than medium- or large-sized fleets. By virtue of the truck age, these trucks meet less stringent air-emission standards. Recommends a strategy that encourages fleet turnover within the industry by rewarding companies that are doing the right thing. Questions allocating grant money in the program to "bad actors" in the sector, when good companies are making the necessary investments to promote clean-air technology. States their greatest concern is that small fleets are unlikely to have the tooling, reporting and capability to collect the data so the evaluation is meaningful. Reporting off of fuel slips and odometers or hub meters is not verifiable. Data should come from an electronic source. Given the amount of	9. Based on input from the DNR, the Department believes that greater emissions reductions may be achieved from retrofitting older trucks than newer trucks. Discussions with representatives of small fleets and large fleets, and input from the US Environmental Protection Agency, indicate that small fleets of eligible trucks are expected to have pertinent reporting capabilities which are similar to large fleets.

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		money the State is investing in this program, the Department should require data that comes from an electronic recording device. Recommends, for this reason, reducing the allocation for small fleets to 10 percent. 10. Believes the above suggestions would enhance the program by ensuring the best possible use of public funds for the improvement of air quality. An open, competitive application process based upon demonstrated air quality will ensure that public funds are best spent for the public good in a way that will maximize air quality improvements.	10. Comment is noted
Exhibit 2	Dave and Sheila Yeske Sparta, Wisconsin	States that with the rising cost of fuel and other rising operating costs, purchasing an auxiliary power unit (APU) is unaffordable by a small owner/operator on a limited budget, without financial assistance. Over the past 4 years, the price for an installed APU has increased from $3000 to around $10,000. And as the number of states and cities that have no-idling laws increases, along with the hours-of-service rules, it's almost becoming a health issue during the summer and winter months. Calculates their fueling savings would be $4860 annually if they had an APU, based on a fuel cost of $2.25 a gallon. With fuel at $2.99, the savings would be about $6460 the first year, so the APU would pay for itself in just over 1 1/5 years; and with the escalating fuel prices, the payback may be sooner. Believes this program is one the finest programs offered.	Support is noted. The proposed allocation for small fleets has been retained in the draft rules.
Exhibit 3	Joseph Rajkovacz, Director Owner Operator Independent Drivers Association Edgar, Wisconsin	States that the following checks and balances in the eligibility criteria need to be addressed, because a few large fleets in Wisconsin will garner the majority of the financial benefits from this program. 1. The large fleets that will get most of the grant money have significant lease/sales arrangements with owner-operators who in turn agree to lease the equipment back to them. In no way should this money be allowed to be "co-mingled" for anti-idling technology in trucks leased or sold to owner-operators under lease-back agreements to these motor carriers. The opportunity for these carriers to "pass along" the cost of anti-idling technology along with whatever "mark-up" they deem appropriate would just be too irresistible. A simple requirement that vehicles be titled in the name of the grant recipient is not good enough, as many of the lease arrangements entered into by motor carriers and owner-operators have the title remain in the motor carrier's name until lease completion (if that ever happens). In other words, taxpayers of Wisconsin would hand over hundreds of thousands of dollars to a motor carrier that would be able to purchase anti-idling	1. As currently written, section 560.125 (4) of the Statutes allows the Department to issue grants in this program only to an applicant who both owns and operates a diesel truck tractor.

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		technology below market prices and in turn lease the equipment to an owner-operator and recoup full market price for the technology. A $200,000 grant to a single carrier could easily be turned into $500,000 via charge backs to owner-operators – a tidy profit from taxpayer supplied money. The only way to ensure this does not happen is to have a requirement that all grant money received can only be used on fleet-owned vehicles that cannot be leased to another individual. 2. Believes trucks that are not licensed in Wisconsin should not be included in the grant program. The fleets that will receive a majority of the grant money have significant out-of-state operations which include trucks domiciled elsewhere. Therefore, there is a strong likelihood that the money granted will be used to equip trucks which will rarely, if ever, operate in Wisconsin. Motor carrier fleets that operate in large part out-of-state defeat the very point of this program, which is to reduce truck idling in Wisconsin to improve air quality. A requirement to report the amount of time a truck spends in Wisconsin should be added. A trucking operation that spends little or no time in Wisconsin should be disqualified from receiving benefits from this program.	2. The application form has been revised to require showing the total miles driven in Wisconsin. The prescribed format for the post-installation reports will also address Wisconsin miles and total miles. During the first year of the program, the Department will monitor this data, and may consider it further during allocation of grants in subsequent years.
Exhibit 4	Jessica Lawent Wisconsin Department of Natural Resources Madison, Wisconsin	1. Believes that while there is merit to claims that extending the grants to older trucks would encourage trucking companies to keep older vehicles rather than upgrade to a more efficient fleet, many smaller fleets may have older vehicles because the owners cannot afford to upgrade to newer vehicles. These owners likewise may not be able to afford idling reduction retrofits. These are the fleets that are in most need of the Commerce funds, to reduce emissions wherever possible. Also, it is the older vehicles that have the highest emissions, so excluding those vehicles would be ignoring a large source of emissions from this sector. Recommends adding language that would require older model year trucks to be "reflashed" prior to receiving grant funds. 2. Notes that to receive credits for idling reduction in the State Implementation Plan, the DNR would need to know the amount of time trucks are idling in Wisconsin counties. Consequently, idling time and location (county) should be included as components for fleets to provide, in the biannual reporting for the grants.	1. Support is noted. The application form has been revised, for older model year trucks, to require including proof of compliance with the federal emission standards prescribed in section 560.125 (1) (f) of the Statutes. 2. The application form has been revised to include these components, and the post-installation reports will address them as well.
Exhibit 5	Julie Magee US Environmental	1. Appreciates Wisconsin's efforts to reduce idling from diesel-powered trucks. Reducing idling translates into substantial reductions of air	1. Support is noted.

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	Protection Agency, Region 5 Chicago, IL	pollutants. For the trucking industry, reducing idling results in considerable fuel savings. According to EPA studies, long-duration truck idling annually consumes more than one billion gallons of diesel fuel, at considerable costs to the trucking industry. As a result, truck idling annually emits more than 11 million tons of carbon dioxide and more than 180,000 tons of nitrogen oxides, as well as fine particulate matter and other harmful air toxics. 2. Recommends applying EPA's SmartWay Transport Partnership program as the means by which participating Wisconsin trucking companies record their emissions and fuel savings. This voluntary partnership with the freight industry has grown to over 400 partners improving their freight operations. Companies that manufacture, ship or transport goods through the marketplace are eligible to participate. To date, 9 Wisconsin carriers have joined the Partnership, to improve the environmental performance of their fleet operations. Recommends that carriers complete the program's FLEET model (Freight Logistics Environmental and Energy Tracking Performance Model). The FLEET model allows a truck company to enter information about their existing fleet characteristics, select methods to reduce emissions and conserve fuel (such as selecting a mobile idle reduction technology), and determine the amount of fuel savings and emissions reductions. Wisconsin would benefit from having participating fleets report the information on emissions reduced as part of this project. As the truck companies operate their fleet, they should track the use of the mobile idle reduction technology and enter this information in the FLEET model, to determine actual emissions reduced and fuel saved.	2. The Department will encourage but not require grant recipients to participate in the SmartWay program.

File reference: Comm 131/Hearing Summary

2005 Session

FISCAL ESTIMATE DOA-2048 N(R03/97)	☒ ORIGINAL ☐ UPDATED ☐ CORRECTED ☐ SUPPLEMENTAL	LRB or Bill No./Adm. Rule No. DWD 133 Amendment No. if Applicable

Subject
Unemployment insurance and temporary help employers

Fiscal Effect

State: ☒ No State Fiscal Effect

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

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

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

☐ Decrease Costs

Local: ☒ No local government costs

1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected:
☐ Towns ☐ Villages ☐ Cities
☐ Counties ☐ Others ______
☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The rule reflects current best practices in the temporary help industry and is not expected to qualify or disqualify more claimants of employers following these practices.

Long-Range Fiscal Implications
none

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Elaine Pridgen 608/267-9403		