

Report From Agency

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE CREATING RULES

The Wisconsin Department of Revenue proposes an order to: **create** Tax 8.63; **relating** to liquor wholesaler warehouse facilities.

Analysis by the Department of Revenue

Statute interpreted: s. 125.54 (7), Stats.

Statutory authority: s. 125.54 (7) (d), Stats.

Explanation of agency authority: Section 125.54 (7) (d), Stats., provides that the department shall promulgate rules to administer and enforce the requirements of s. 125.54 (7), Stats. It also provides that the department shall establish by rule minimum requirements for warehouse facilities on premises described in permits issued under s. 125.54, Stats., and for periodic site inspections by the department of such warehouse facilities.

Related statute or rule: s. 125.54 (7), Stats.

Plain language analysis: This proposed rule order requires that a liquor wholesaler warehouse facility described in a wholesalers' permit be a minimum of 4,000 square feet of floor space and be located in a free-standing building that is not part of or connected to a liquor retailer facility. It also requires permit-holding liquor wholesalers to retain invoices of their liquor purchases and complete a monthly inventory of their liquor stock. The invoices and inventory records must be kept at the warehouse facility described in the permit for two years, and must be open to inspection at all reasonable times by any representative of the department.

In addition to the requirements concerning liquor wholesaler warehouse facilities and liquor wholesalers, the rule requires the department to conduct a site inspection of the warehouse facility and a background investigation of the applicant before issuing a wholesalers' permit. It also requires the department to conduct periodic site inspections of warehouse facilities described in wholesalers' permits. Applications for wholesalers' permits must be processed by and site inspections of warehouse facilities must be conducted by department personnel generally familiar with activities of liquor wholesalers.

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states: The department is not aware of a similar rule in an adjacent state.

Summary of factual data and analytical methodologies: 2005 Wisconsin Act 25 created s. 125.54 (7), Stats., which establishes requirements for liquor wholesaler warehouse facilities and the activities of liquor wholesalers. Within the provisions of s.125.54 (7), Stats., is a requirement that the department promulgate rules to:

- Administer and enforce the requirements for liquor wholesalers and liquor wholesaler warehouse facilities.

- Ensure coordination between the department's issuance and renewal of wholesalers' permits and its enforcement of the requirements for liquor wholesalers and liquor wholesaler warehouse facilities.
- Require that all applications for issuance or renewal of wholesalers' permits be processed by department personnel generally familiar with activities of intoxicating liquor wholesalers.
- Establish minimum requirements for warehouse facilities on premises described in wholesalers' permits and for periodic site inspections by the department of such warehouse facilities.

In consultation with the liquor wholesaler industry, the department has created this proposed rule order to satisfy the above requirements.

Analysis and supporting documents used to determine effect on small business:

Section 125.54 (7), Stats., was created to establish minimum requirements in order to prevent liquor wholesalers who are not bona fide from operating in Wisconsin. Based on its consultation with the liquor wholesaler industry, the department understands that all of the bona fide liquor wholesalers currently operating in Wisconsin meet the requirements set forth in this proposed rule order. Based on this, the department has concluded that this proposed rule order does not have a significant effect on small business.

Anticipated costs incurred by private sector: This proposed rule order does not have a significant fiscal effect on the private sector.

Effect on small business: This proposed rule order does not have a significant effect on small business.

Agency contact person: Please contact Dale Kleven at (608) 266-8253 or dkleven@dor.state.wi.us, if you have any questions regarding this proposed rule order.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the contact person shown below no later than one week after the public hearing on this proposed rule order is conducted. Information as to the place, date, and time of the public hearing will be published in the Wisconsin Administrative Register.

Dale Kleven
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933

SECTION 1. Tax 8.63 is created to read:

Tax 8.63 Liquor wholesaler warehouse facilities. (1) MINIMUM REQUIREMENTS FOR WAREHOUSE FACILITIES. The premises described in a permit issued under s. 125.54, Stats., shall be a minimum of 4,000 square feet of floor space and shall be located in a free-standing building that is not part of or connected to a premises covered by a retail license or permit issued under s. 125.51, Stats.

(2) PURCHASES BY A WHOLESALER. Every permittee under s. 125.54, Stats., shall retain invoices covering all purchases of intoxicating liquor stored at the premises described in the permit for a period of 2 years from the date of the invoice. Such invoices shall be retained on the premises described in the permit and shall be open to inspection at all reasonable times by any representative of the department.

(3) INVENTORY RECORDS. Every permittee under s. 125.54, Stats., shall complete a written inventory listing the entire stock of intoxicating liquor stored at the premises described in the permit as of the close of business on the last day of every month. A copy of the inventory listing shall be retained on the premises described in the permit for 2 years from the date the inventory is completed and shall be open to inspection at all reasonable times by any representative of the department.

(4) INSPECTIONS OF WAREHOUSE FACILITIES. Before issuing a permit under s. 125.54, Stats., the department shall conduct a site inspection of the premises described in the permit application to determine if such premises meets the minimum requirements described in sub. (1). The department shall also conduct periodic site inspections of premises described in permits issued under s. 125.54, Stats. Site inspections shall be conducted by department personnel generally familiar with activities of intoxicating liquor wholesalers.

(5) BACKGROUND INVESTIGATIONS OF APPLICANTS. Before issuing a permit under s. 125.54, Stats., the department shall conduct a background investigation to determine that the applicant is qualified to hold the permit. The background investigation shall be limited to obtaining information that is necessary to enable the department to verify that the applicant meets the eligibility requirements described in s. 125.54 (2), Stats.

(6) PROCESSING OF PERMITS BY THE DEPARTMENT. All applications for issuance or renewal of permits under s. 125.54, Stats., shall be processed by department personnel generally familiar with activities of intoxicating liquor wholesalers. The issuance and renewal of permits shall be done in coordination with the enforcement of the requirements of s. 125.54 (7), Stats., including the inspections under sub. (4) and the background investigations under sub. (5).

Note: Section Tax 2.99 interprets s. 125.54 (7), Stats.

Note: Section 125.54 (7), Stats., was created by 2005 Wis. Act 25, effective July 27, 2005.

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

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: _____

By: _____

Michael L. Morgan
Secretary of Revenue

E:Rules/863 Proposed Order (revised)