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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 04-010

#### 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 October 2002.]

#### 2. Form, Style and Placement in Administrative Code

- a. In s. DWD 270.06, sub. (3) should, it appears, be sub. (2).
- b. In s. DWD 270.11 (2) (a), “may not” should replace “shall not.”
- c. It would appear that the provision numbered s. DWD 270.12 (6) (c) should be renumbered s. DWD 270.12 (6) (b) 3.
- d. In s. DWD 270.12 (8) (b), and elsewhere throughout the rule, the defined terms should be listed alphabetically. [See s. 1.01 (7) (a), Manual.] The entire rule should be reviewed for the appropriate alphabetization of definitions in various subsections.
- e. In s. DWD 270.12 (20), it would be helpful to include a note indicating that coal mining is covered by sub. (8).
- f. In s. DWD 270.12 (22) (b) 5., the last sentence should not be included in the definition. If the last sentence is necessary for a better understanding of the rule, it may be placed in a note to the rule.
- g. In s. DWD 270.12 (23) (a) 1. e., the rule refers to occupational exposure to certain substances above concentrations recommended by the National Committee on Radiation Protection. A note should be included in the rule identifying where this recommendation may be found.

h. In s. DWD 270.13 (6), pars. (e), (f), and (g) appear to be exceptions to par. (a). However, par. (a) does not appear to provide for any exceptions. Are pars. (e), (f), and (g) exceptions to par. (a) or exceptions to some other provision of the rule? If they are exceptions to par. (a), it would appear proper to include a phrase such as “except as provided in pars. (e) through (g)” in par. (a). In any case, the rule should be clarified. In addition, in par. (e) 4., the rule refers to a manual of farm safety courses. A note should be included in the rule indicating where that manual may be viewed or obtained. [Also see sub. (6) (a) 10.]

i. In s. DWD 270.13 (6) (g), the rule refers to a minor having completed certain training and passing an exam on tractor and farm safety. A note should be included in the rule indicating who may offer this training and examination. In addition, in subds. 7. and 8., it appears that those subdivisions contain titles whereas no title is contained in the other subdivisions in par. (g). The rule should use titles consistently. [See s. 1.05 (1), Manual.] Finally, in subd. 7. c., the rule refers to a training program outlined by the federal Department of Education and accepted by the federal Department of Labor. It would be helpful to include a note indicating where such a program may be obtained.

j. In s. DWD 270.14, the introductory sentence should be renumbered as sub. (1) and subds. (1) and (2) renumbered as subds. (2) and (3), respectively. Throughout the rule, introductory material either should end in a colon and lead into the subunits that follow or should be renumbered so that it is not introductory material. [See s. 1.03 (8), Manual.] As another example, see s. DWD 270.11 (intro.).

k. In s. DWD 270.16 (2), “above” should be deleted. In the last sentence, “the list” should replace “such list.”

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. DWD 270.04 (13), the appropriate cross-reference in both the substantive provision and the note should be to s. 115.01 (1), Stats.

b. In s. DWD 270.05 (2) (a), the rule refers to “these provisions.” A more appropriate cross-reference should be provided as it is not clear whether the phrase refers to the statutory sections previously cited or to provisions of the rule. In addition, in par. (g), the statutory reference should be to s. 938.32 (1t) (a) 2., Stats.

c. It appears that s. DWD 270.09 is nearly identical to other provisions contained in other portions of the administrative code. For example, it is nearly identical to s. DWD 272.11. Thus, the rule could be simplified by simply indicating that every employer must comply with s. DWD 272.11 and must also comply with the substance contained in proposed par. (e) with respect to minors and their meal periods.

d. Section DWD 270.11 (1) (d) refers to “this order.” A more appropriate cross-reference should be provided. For example, does the phrase mean “this chapter,” “this paragraph,” or something else? In addition, the reference to “par. (2) (d)” should be to “sub. (2) (d).”

e. Section DWD 270.11 (2) (d) 4. provides that “this sub. shall not apply” to certain minors. The term “sub.” should be replaced by the term “subsection,” if that is the rule’s intent. However, is the phrase referring to the subsection or to the paragraph? The rule should be clarified.

f. In s. DWD 270.11 (4) (a), the rule refers to certain minors being employed “the same daily and weekly hours and time of day as adults.” A more appropriate cross-reference should be provided to identify those daily and weekly hours and time of day requirements. In fact, however, is the rule really indicating that there are no daily and weekly hours and time of day limitations for these minors? In any event, the rule should be clarified so as to better identify the applicable limits. In addition, in the last sentence of par. (b), a more appropriate cross-reference should be provided to identify which daily hour limits and time of day restrictions do not apply. Additionally, in par. (c), the references to “par. (2) (d)” should be to “sub. (2) (d).” Finally, in par. (d), a cross-reference should be provided to identify the hours that a minor may work if he or she is enrolled in a public school.

g. In s. DWD 270.12 (11) (b) 3. d., the rule refers to “subpars. a. through c.” The rule should refer to these as subdivision paragraphs.

h. In s. DWD 270.12 (12) (a) (intro.), the phrase “Except as provided in par. (c),” should be inserted at the beginning of the sentence.

i. In s. DWD 270.12 (16), the rule refers to “hazardous exposure to lead.” At what levels or in what situations does hazardous exposure occur? A more specific cross-reference to a statute or rule identifying hazardous exposure would be appropriate.

j. In s. DWD 270.12 (17) (a) 4., the rule refers to “this section.” It appears that the reference should be to “this subsection.” This comment applies to numerous provisions in the rule where the rule refers to “this section” or “this paragraph” when it appears that the rule should be referring to a different subunit of the rule. (See, for example, s. DWD 270.12 (19) (b) 1. to 3., (22) (b) 1., and (25) (b) 2. and 3.) The entire rule should be reviewed for appropriate use of internal cross-references.

k. In s. DWD 270.13 (15), the second occurrence of par. (b) should be par. (c).

l. Section DWD 270.15 (intro.) seems to indicate that the section is an exception to s. DWD 270.11. If so, an appropriate reference to this exception should be included somewhere in s. DWD 270.11.

m. In s. DWD 270.18 (1) (b), the last sentence refers to “school budget year.” It is not entirely clear what that term means. Perhaps a more clear term could be used such as “school year as defined in s. 115.001 (13)” or “school term as defined in s. 115.001 (12), Stats.” The rule should be clarified.

n. In s. DWD 270.19 (intro.), the phrase “Prohibited employment restrictions” should be replaced by a more specific cross-reference to the specific prohibited employment restrictions being referred to. Also, in sub. (1), the rule refers to “the law or rules concerning prohibited

employment.” Again, a better cross-reference to a particular provision of the rules needs to be included. This comment also applies to the phrase “statutes or rules concerning prohibited employments” found in sub. (3) (intro.). In addition, in sub. (2), the rule refers to “This rule.” A more specific cross-reference to, perhaps, “This chapter” or “This subsection” should be used. Additionally, a cross-reference should be provided at the end of the last sentence to correctly refer to the “work permit requirements.” For example, the end of the sentence could read “from the work permit requirements of s. DWD...” Finally, in sub. (3) (d), the phrase “This exemption” needs to be better identified with an appropriate cross-reference.

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

a. In s. DWD 270.02, the rule refers to “the higher standard.” How is this “higher standard” measured? Is the rule really referring to a standard that provides more protection for the minor? The rule should be clarified.

b. In s. DWD 270.04 (3), the phrase “Department of Workforce Development” should not be capitalized. [See s. 1.01 (4), Manual.]

c. In s. DWD 270.04 (10), the quotation marks around the phrase “home-based private educational program” should be removed.

d. In s. DWD 270.05 (1), the rule should be written in the active voice so that the phrase “there is first obtained” better identifies who is to obtain the permit. Additionally, the end of s. DWD 270.05 (3) (intro.) should be rewritten substantially as follows “when all of the following are presented to the permit officer:”. In addition, it is assumed that in par. (a), the proof of age that must be presented is proof of “the child’s” age. The rule should be clarified accordingly. In par. (b), the repeated use of the term “person” should be replaced by the term “employer.” In addition, it would appear that in par. (c), the phrase “while the minor is under their care and supervision” could be deleted. If not, the term “their” should be replaced by the phrase “the parent’s, guardian’s, or foster parent’s.” In par. (d), must the actual Social Security card be presented or just the Social Security number? In par. (e), the phrase “from the employer” at the end of the first sentence can be deleted.

e. It is noted that there are two occurrences of s. DWD 270.05 (3). In the second occurrence of s. DWD 270.05 (3) (b), are the copies to be forwarded just those issued in that month or all permits issued? In addition, the last sentence should be rewritten substantially as follows: “This paragraph does not apply to permits issued for summer employment or for out-of-state students.”

f. In s. DWD 270.05 (4) (a), must the department consider reasonable accommodations when deciding to refuse to grant a permit in the case of a minor who “seems” physically unable to perform the labor? The rule should be clarified. In addition, because par. (e) requires notice of a revocation, the phrase “without notice” in par. (b) (intro.) should more accurately be “without prior notice.” Finally, par. (c) appears to require that a work problem involving the minor needs to exist as the basis for a revocation or suspension of a work permit requested by the

minor's parent or guardian. If that is the case, par. (c) should be rewritten so as to state that requirement up front.

g. In s. DWD 270.06 (3) (a), the phrase "a authorized" should be replaced by the phrase "an authorized." In addition, in par. (d), the second sentence should begin with the phrase: "The permit officer shall attach a certificate of age to...." In addition, what is a "record of age"? The rule should be clarified.

h. In s. DWD 270.07 (intro.), the beginning of the provision should be rewritten substantially as follows: "A permit officer shall accept any of the following items...." In addition, in sub. (3) the term "the" should be inserted after the phrase "signature of." Additionally, sub. (4) (intro.) should be rewritten substantially as follows: "When the proofs of age in subs. (1) to (3) are not attainable, any of the following may be used as proof of age:". Also, in sub. (4) (b), the term "A" should be inserted at the beginning of the sentence before the word "life." In par. (c), what is a "school record of age"? Does that term have a specific meaning? If so, the definition should be provided.

i. In s. DWD 270.08, the beginning of the first sentence should be rewritten substantially as follows: "The fee for issuing each child labor permit...." In addition, in the second sentence, the phrase "is authorized to" should be replaced by the term "may."

j. The title to s. DWD 270.10 (1) is misleading in that it gives the impression that 18-year olds are covered. It should read: "14 YEARS OF AGE AND OLDER." The subsection should begin with: "A minor who is 14 years of age or older...."

k. In s. DWD 270.10 (1) and (2), the term "gainful occupation" is used. Is that term necessary? Is it enough to say that a minor may not be permitted to work during certain hours or at certain times? If the term "gainful occupation" is not needed, it should be deleted. In addition, in s. DWD 270.10 (2) (g), the last portion of the paragraph should be rewritten substantially as follows: "would otherwise not be prohibited from being employed...." In addition, in par. (h), the term "sideline officials" is used. What are "sideline officials" at high school football games? The term obviously does not mean "ball monitors" as a later provision deals with those positions. The rule should be clarified.

l. In s. DWD 270.11 (1) (a) 3., the term "less" should be changed to the term "fewer." This same comment applies to par. (b) 3.

m. In s. DWD 270.11 (1) (d) 2., the rule uses the term "peak periods." What is a "peak period" in farming? Is the term to be applied on a case-by-case basis to each farm or is there an industry standard that is applied in these cases? The rule should be clarified.

n. In s. DWD 270.11 (2) (b), the exception in the first sentence should be rewritten as follows: "except they may not be employed before 5:00 a.m. if employed in farming." This comment applies to pars. (c) and (d) 1., as well. In par. (d) 3., the use of the term "work" in the first sentence should be replaced by the phrase "be employed" to be consistent with other portions of the subsection. In addition, the exception at the end of the second sentence should be

rewritten as follows: “except that adult supervision is not required if the minor is employed in farming.”

o. In s. DWD 270.11 (3), the beginning of that provision should be written substantially as follows: “An employer of a minor shall allow a minor at least 30 minutes for each meal period....” In addition, the second sentence should begin: “No minor may be employed....”

p. Does s. DWD 270.11 (4) (a) apply to minors 16 and 17 years of age who have their high school equivalency degrees?

q. In s. DWD 270.11 (4) (b), the rule uses vague terms such as “emancipated,” “living independently,” and “head of the household.” Is there a better, more clear way of defining the minors being addressed in the paragraph? If so, the rule should be revised accordingly.

r. In s. DWD 270.11 (4) (c), in the second sentence, the phrase “apply for students” should be replaced by the phrase “apply to students.”

s. In s. DWD 270.11 (4) (d), is there a difference between “home-schooled” and “schooled at home”?

t. In s. DWD 270.12 (6) (b) (intro.), the introductory material should read: “In this subsection:”. Accordingly, each subdivision may then begin with the term being defined rather than with the phrase “The term.” The entire rule should be reviewed for use of this drafting convention.

u. In s. DWD 270.12 (7) (b), the rule indicates that confined spaces include “underground utility vaults.” However, the same provision also provides that confined spaces do not include “vaults.” This appears to be a contradiction, at least with respect to utility vaults. The rule should be clarified. In addition, a period should be inserted after the word “pipelines” and the last clause of the paragraph should be rewritten substantially as follows: “Confined spaces do not include....”

v. In s. DWD 270.12 (8) (a), can the phrase “slate or other” be deleted so that the exception only applies to “refuse picking”? If so, the rule should be revised. In addition, the phrase “located in the surface” should be changed to “located on the surface.”

w. In s. DWD 270.12 (8) (b) 2., the rule refers to certain work that contributes to the extraction, grading, cleaning, or other handling of coal. What does the rule mean by the term “contribute”? Is this term to be construed broadly such that all types of support work that may “contribute” to those activities are included within the rule or is the term “contribute” more narrow so as to include only the direct work of extracting, grading, cleaning, or handling? The rule should be clarified.

x. In s. DWD 270.12 (9) (c), the rule implies that working within tunnels is permissible if the tunnels are shored. However, it is noted that s. DWD 270.12 (7) provides that work in tunnels is prohibited. The appropriate intent of the rule should be clarified.

y. In s. DWD 270.12 (10), the last clause does not appear to be necessary and it appears sufficient to provide that: “No minor may be employed as an exotic dancer.”

z. In s. DWD 270.12 (11) (b) 3. (intro.), the rule uses the term “nonexplosive area.” For purposes of the rule, what is a “nonexplosive area”? Perhaps it would be sufficient to delete the term “nonexplosive” and simply provide that a minor may work in occupations performed in areas that meet all of the listed criteria. In any event, the rule should be clarified. In addition, in par. (c) 1., the phrase “manufacturing or processing or storing” should be rewritten as “manufacturing, processing, or storing.”

aa. In s. DWD 270.12 (12) (b) 6., the phrase “; such belt, cable or chain” should be deleted.

bb. In s. DWD 270.12 (12) (c) 2. (intro.), the conditional portion of the introductory material should be rewritten substantially as follows: “if the elevator meets all of the following criteria:”. In addition, in par. (c) 2. a., the semicolons should be deleted and replaced with commas. Additionally, in par. (c) 3. and 4., the phrase “the exception in” can be deleted. Finally, in par. (c) 4., the word “the” should be inserted immediately before the term “leveling.”

cc. In s. DWD 270.12 (13), the beginning of the provision should be rewritten as follows: “No minor may be employed in any occupations or duties....”

dd. Section DWD 270.12 (15), and other provisions of the rule, uses both the phrase “may be employed” and “may work.” Do these phrases mean different things? If not, it is suggested that the rule use consistent terminology. If the phrases have different meanings, those meanings should be explained in the definition portion of the rule.

ee. In s. DWD 270.12 (17) (a) (intro.), the introductory material is too long. It is suggested that after the word “trestles” a period be inserted followed by the following introductory sentence: “This prohibition does not apply to any of the following:”. In addition, in par. (a) 1., it is presumed that the allowable work in offices and in repair or maintenance shops apply to such places that are related to logging. However, the rule should be clarified. This comment also applies to par. (a) 5. Additionally in par. (a) 3., the colon at the end should be replaced by a period.

ff. In s. DWD 270.12 (17) (b) (intro.), the introductory sentence is too long, and needs to be broken into at least two sentences. In addition, it is noted that there are two pars. (b) in sub. (17). One should presumably be a “par. (c).” In the second par. (b) 1., in the last sentence the phrase “shall not apply to” should be changed to “does not include.”

gg. In s. DWD 270.12 (18) (b) 4., in the second sentence, the word “that” should be replaced by the word “a”.

hh. In s. DWD 270.12 (19) (b) 2., the phrase “helping to” should be inserted immediately before the word “remove.”

ii. In s. DWD 270.12 (20) (a) 4., it appears that the term “haulage” could be replaced by the term “hauling.”

jj. In s. DWD 270.12 (21) (a), the word “an” should be inserted before the phrase “open pit mine.” In addition, the provision should be reworded as follows: “Except as provided in par. (b), no minor may work as a motor vehicle driver or outside helper on any public road, highway, in or about a mine, including an open pit mine or quarry, in a place where logging or sawmill operations are in progress, or in any excavation of the type identified in sub. (9).” In addition, in par. (b) 3., and elsewhere throughout the rule, the pronouns used should correspond with the subject of the sentence. For example, when the subject is “the minor,” the pronoun should not be “they.” In those instances, the term “they” should be replaced by a more appropriate pronoun such as “he or she” or by the phrase “the minor.” The entire rule should be reviewed for appropriate pronoun selection. Additionally, in par. (b) 4., the word “exceeding” should be changed to “exceed.” Finally, in par. (b) 5., would it be more appropriate to replace the term “helper” with the term “occupant” or “passenger”?

kk. In s. DWD 270.12 (23) (a) 1. a. to c., the term “a” should be inserted before the phrase “self-luminous compound” in each instance. In addition, in par. (a) 2., the rule uses the term “rem.” What is a rem? The term should be defined. Finally, in par. (b) 2., the definition of the term “workroom” only identifies certain attributes of a workroom that seem to be shared by any room bounded by walls that go from the floor to the ceiling. Does the rule intend for the term “workroom” to be a place where certain work is done and that is enclosed by walls? The rule should be clarified.

ll. In s. DWD 270.12 (25) (a) 2., the material after the word “cleaning” should be deleted and replaced by the phrase “the machines listed in subd. 1. a. to d.” In addition, in par. (b) 2., the phrase “by helping to” should be inserted immediately before the term “remove.”

mm. In s. DWD 270.12 (27) (b) 2. (intro.), the second sentence should state: ““Off-bearing” does not include any of the following:”.

nn. In s. DWD 270.12 (28) (b), the word “or” should be inserted before the term “motor vehicle.”

oo. In s. DWD 270.13 (6) (a) 1., what is meant by PTO?

pp. In s. DWD 270.13 (6) (a) 10., the term “power” should, it appears, be replaced by the term “powder.” In addition, in par. (c) 1., what does the rule mean when it uses the phrase “state or local educational authority”? Can the rule be more precise in its reference? Additionally, in par. (c) 2. b., should the term “person” at the end of the sentence be replaced by the term “adult”? Also, in par. (e) 1., the rule uses the term “4-H.” The rule should define this term.

In addition, in par. (f) (intro.), the introductory material should be rewritten substantially as follows: “A minor is qualified to be employed in an occupation described in par. (a) 2. if the minor satisfies all of the following:”. Similar restructuring should occur with the introductory



sentence of par. (g). Also, in par. (g) 2., the term “familiarizing him with” should be changed to the phrase “relating to.”

qq. In s. DWD 270.13 (11), the rule provides that certain minors may not work in occupations involving the use of a ladder more than six feet high. Is the term “involving” suppose to be construed narrowly? For example, can such a minor work as a painter so long as he or she does not use a ladder more than six feet high? Or, in the alternative, if an occupation involves the use of a ladder, is a minor prohibited from participating? If the former interpretation is correct, perhaps the rule would be more clear if it provided: “No minor under 16 years of age may work on a ladder, scaffold, or similar device that is more than six feet high.” In any event, the rule should be clarified.

rr. In s. DWD 270.13 (12), it would appear that the phrase “work in occupations involving” could be replaced by the phrase “be employed.”

ss. For purposes of the second occurrence of the par. (b) in s. DWD 270.13 (15), it would appear that subds. 4. and 5. could be rewritten as follows:

4. For minors 14 years of age and over, vacuum cleaners and floor waxers.

5. For minors 14 years of age and over, machines and devices used in the performance of kitchen work as provided in sub. (10).

tt. Does s. DWD 270.13 (16) apply to office work with a public messenger service or just the delivery? The rule should be clarified.

uu. In s. DWD 270.13 (18), the term “minor” should be inserted after the word “No.”

vv. In s. DWD 270.14 (1), the phrase “by the parent or guardian” should, it appears, be inserted immediately after the word “supervision.” In addition, it appears that the phrase “in farming” should be inserted after the word “employed.” Finally, for purposes of sub. (2), the rule uses the term “exchange purposes.” Is there a current interpretation of “exchange purposes” that would help to clarify the rule’s intent?

ww. In s. DWD 270.15 (intro.), the rule should better define what it means by “season of actual first processing.”

xx. In s. DWD 270.15 (1) (a), the sentence should begin with the word “During” rather than the word “On.” In addition, what is the “season” that the rule is referring to? Also, the phrase “providing that such employment shall” should be changed to “if the employment does.” Finally, it appears that the term “employee” should be changed to the word “minor.”

yy. In s. DWD 270.15 (1) (b), what does the phrase “time of day” refer to? Can the phrase be deleted so that it is more clear that s. DWD 270.11 (2) (c) does not apply?

zz. It appears that in s. DWD 270.15 (6) the rule is defining two different standards for the granting of a waiver or modification. Is that correct? If so, perhaps sub. (6) can be broken down into paragraphs better identifying each circumstance under which a waiver may be granted.

For example, the first paragraph could make clear that a waiver modification may be granted by the department when labor and management agree that practical difficulties or unnecessary hardships may result from complying with the section. The second paragraph could clarify that in other situations, if the department determines that compliance with the section is unjust or unreasonable based on existing circumstances, a waiver may be granted. If a different interpretation is intended, the rule should be clarified.

aaa. In s. DWD 270.16 (2), the phrase “a person designated by it to issue labor permits” should be replaced by the term “permit officer,” as that term is defined and used consistently in the rule. In addition, may the phrase “be deemed to” be deleted? It appears to be unnecessary.

bbb. In s. DWD 270.17 (2), the phrase “a occupation” should be replaced by the phrase “an occupation.” In addition, in sub. (4), the term “Teenage” should be replaced by the term “Minor.” Finally, sub. (5), as drafted, is awkward. Perhaps a better formulation for this subsection would be to provide as follows:

(5) In this section, “volunteer service” includes service to a nonprofit organization under the graduation requirements of a school or school district.

ccc. In s. DWD 270.18 (1) (b), how many are a “few consecutive days”? The rule should be clarified as the term “few” is too vague. In addition, in sub. (2) (a), what does it mean for an activity to be “basically educational”? The rule should be clarified.

ddd. In s. DWD 270.19 (intro.), the word “and” should be replaced by the word “or.” In addition, in s. DWD 270.19 (1), the rule provides that certain minor apprentices are not subject to the prohibited employment restrictions if, “at the time of injury,” they are performing service within the provisions of the apprenticeship indenture. Does this mean that the rules about prohibited employment do not apply only if the minor is injured? Is the phrase “at the time of injury” necessary? This comment also applies to sub. (3).

eee. In s. DWD 270.19 (3) (b) (intro.), the word “shall” should be inserted before the phrase “be signed by the parent” and the word “must” should be replaced by the word “shall.” It also appears that the phrase “among other things.” should be replaced by the phrase “all of the following:”.