

CR 85-5

STATE OF WISCONSIN)
) SS.
DEPARTMENT OF AGRICULTURE,)
TRADE & CONSUMER PROTECTION)

RECEIVED

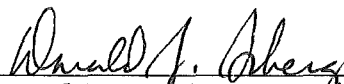
JAN 17 1986
2.05 pm
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald J. Soberg, Administrator, Trade and Consumer Protection Division, State of Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official files of said Division, do hereby certify that the annexed order adopting rules relating to the sale of hazardous substances within this state and in particular the sale of butyl nitrite and its isomers within this state, section Ag 72.04(10), Wis. Adm. Code, was duly approved and adopted by the Department on January 17, 1986.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 17th day of January, 1986.



Donald J. Soberg, Administrator
Trade & Consumer Protection Division

3-1-86

ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING OR REPEALING RULES

1 Relating to the sale of hazardous substances within this
2 state and in particular the sale of butyl nitrite and its isomers
3 within this state.

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

Under section 100.37(2)(d) of the state's hazardous substance act, the department may by rule prohibit the sale of a hazardous substance if it finds that notwithstanding cautionary labeling that is or may be required the degree or nature of the substance is such that the public health and safety can only be protected by keeping the substance out of the channels of commerce in this state. This rule will add butyl nitrite, all of its isomers, and mixtures containing butyl nitrite or its isomers to the list of products banned in Wisconsin under Ag 72.04, Wis. Adm. Code. Butyl nitrite and its isomers are sold in this state under various trade names as "room odorizers" and used and advertised for use as recreational inhalants even though cautionary labeling says they should not be inhaled. Use of these products as inhalants has been linked to various adverse physical effects, including at least two fatalities.

On the basis of the public hearing record, the department has concluded that butyl nitrite, its isomers, and products containing them are hazardous substances; that cautionary labeling presently on the products or that might be required cannot adequately protect the public health and safety, and that therefore sale of the product should be banned in Wisconsin.

4 Pursuant to the authority vested in the state of Wisconsin
5 department of agriculture, trade and consumer protection by
6 ss. 93.07(1) and 100.37(2)(d), Stats., the department adopts rules
7 interpreting s. 100.37, Stats., as follows:

8 SECTION 1: Ag 72.04(10) is created to read:

9 (10) Butyl nitrite, isobutyl nitrite, secondary butyl nitrite,
10 tertiary butyl nitrite, and mixtures containing butyl nitrite,
11 isobutyl nitrite, secondary butyl nitrite, or tertiary butyl

1 nitrite.

2 SECTION 2: The rules contained in this order shall take
3 effect on the first day of the month following publication in the
4 Wisconsin Administrative Register as provided in s. 227.026(1)
5 (intro.), Stats.

6 Dated: This 17th day of January, 1986.

7 STATE OF WISCONSIN
8 DEPARTMENT OF AGRICULTURE,
9 TRADE AND CONSUMER PROTECTION

10 By Donald J. Soberg
11 Donald J. Soberg, Administrator
12 Trade and Consumer Protection
13 Division

14 RWK/T4/1/CP2
15 1/15/86-5

16 Final Regulatory Flexibility Analysis

17 The adoption of Ag 72.04(10), Wis. Adm. Code, will have an
18 effect on "small business" as defined in s. 227.016(1)(a), Wis.
19 Stats. At the present time, butyl nitrite, its isomers, and
20 products containing them are sold in Wisconsin by certain book and
21 music stores, taverns and shops that sell smoking equipment, most
22 if not all of which fall within the definition of "small busi-
23 ness." These products are also sold in Wisconsin by mail order
24 firms, but none of these firms are actually located in Wisconsin.

25 Notice of the proposed rule and the hearings on it was sent
26 to all businesses in Wisconsin known by DATCP to be actually
27 engaged in the sale of butyl nitrite. In addition, notice of the
28 hearings was sent to the Wisconsin Tavern League. Notice of the
29 hearings was also sent to out-of-state companies known to be
30 engaged in the manufacturing or distribution of butyl nitrite that
31 finds its way into Wisconsin. The proposed rule and hearings on
32 it received considerable publicity in the media.

33 The rule will require that small businesses currently selling
34 these products stop selling them. To the best of DATCP's know-
35 ledge, butyl nitrite products do not represent the major portion
36 of the volume of sales of any of these businesses. Adoption of
37 the rule will result in some loss of income to these businesses.
38 There is no way to effectuate a ban on these products without having

1 this adverse effect on small businesses. Therefore, a small business
2 exemption to this rule is not possible. The rule will not require
3 small businesses to keep any records or to make reports. The rule
4 will not require small businesses to have any professional skills or
5 to put personnel through additional training.

6 Summary of Comments of Legislative Standing Committees

7 The Assembly Committee on Health requested that the department
8 modify the proposed adoption of Ag 72.04(10) by:

9 1. Prohibiting the sale or transfer of butyl nitrite to
10 minors only;

11 2. Prohibiting minors from possessing or using butyl nitrite,
12 and

13 3. Requiring that a warning label be placed on each container
14 of butyl nitrite specifying the dangers of the product.

15 The department refused to accept the Committee's recommenda-
16 tion and the Committee filed an objection to the rule with the
17 Joint Committee for the Review of Administrative Rules. The Joint
18 Committee did not concur in the objection by a vote of 7-0 on
19 December 12, 1985.
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