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Emergency rules now in effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade & Consumer Protection (2)

1. Rules adopted creating **ch. ATCP 112**, relating to credit report security freezes.

Finding of Emergency

(1) The Wisconsin department of agriculture, trade and consumer protection (“DATCP”) will administer s. 100.54, Stats. as of January 1, 2007. DATCP is required under s. 100.54 (12), Stats. to adopt rules related to identification required of consumers requesting credit report security freezes.

(2) As of January 1, 2007, s. 100.54, Stats. will be in effect, however without an emergency rule the statute will be unclear regarding what constitutes proper identification for purposes of creating a security freeze, temporarily releasing a security freeze or permanently removing a security freeze from a consumer credit report.

(3) DATCP is adopting this emergency rule for the sole purpose of allowing consumers to clearly place a security freeze on their consumer credit report while the permanent rulemaking process is completed.

Publication Date: January 19, 2007
Effective Date: January 19, 2007
Expiration Date: June 18, 2007
Hearing Date: February 12, 2007

2. Rules adopted creating **s. ATCP 21.20**, relating to voluntary certification of firewood dealers.

Finding of Emergency

(1) The Wisconsin department of natural resources (“DNR”) has adopted rules, under s. NR 45.04 (1) (g), to restrict the movement of firewood into Wisconsin state parks. The DNR rules are designed to prevent the spread of exotic pests, such as Emerald Ash Borer, that may inhabit firewood. The DNR rules prohibit the possession of firewood in a state park unless the firewood comes from within 50 miles from the park, or from a more distant source approved by the Department of Agriculture, Trade and Consumer Protection (“DATCP”).

(2) The DNR rules effectively prohibit a firewood dealer located more than 50 miles from a state park from supplying firewood to that state park, except as authorized by DATCP. That prohibition may work a substantial hardship on firewood dealers who normally supply significant quantities of firewood to parks located more than 50 miles away.

(3) This rule creates a voluntary certification program for firewood dealers who obtain their wood from Wisconsin and agree to treat the wood for potential pests such as Emerald Ash Borer. Certified firewood dealers may supply firewood to Wisconsin state parks, even though they are located more than 50 miles from those parks.

(4) DATCP is adopting this rule as a temporary emergency rule, pending completion of “permanent” rulemaking proceedings. DATCP cannot complete permanent rules in time for the 2007 camping season. Without this emergency rule, certain firewood dealers may experience unnecessary financial hardship during the 2007 camping season, because they will be precluded from supplying firewood to state parks more than 50 miles away. This emergency rule allows those firewood dealers to continue supplying firewood to more distant state parks, subject to sourcing and treatment requirements that are reasonably designed to prevent the spread of serious exotic pests.

Publication Date: May 22, 2007
Effective Date: May 22, 2007
Expiration Date: September 19, 2007
Hearing Date: June 26, 2007
 [See Notice this Register]

Commerce (Licenses, Certifications, etc., Ch. Comm 5)

Rules adopted revising **ch. Comm 5**, relating to licensing of elevator contractors and installers.

Exemption From Finding of Emergency

Under the nonstatutory provisions of 2005 Wis. Act 456, the Department of Commerce was directed to issue emergency rules that implement provisions of the Act. The Act specifically states: “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of commerce is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection.”

The Act mandates the licensing of elevator contractors and installers. Under the Act no person may engage in the business of installing or servicing conveyances or working on a conveyance unless licensed as of June 1, 2007. These emergency rules are being adopted in order to provide the elevator industry the ability to comply with licensing aspects of the Act and continue working until permanent rules are implemented.

Publication Date: June 1, 2007
Effective Date: June 1, 2007
Expiration Date: October 29, 2007
Hearing Date: June 27, 2007
 [See Notice this Register]

Commerce (Financial Resources for Businesses and Communities, Chs. Comm 104–131)

Rules adopted creating **ch. Comm 135**, relating to tax credits and exemptions for internet equipment used in the broadband market.

Exemption From Finding of Emergency

These rules establish the criteria for administering a program that will (1) certify businesses as temporarily eligible for tax credits and exemptions for Internet equipment used in the broadband market, and (2) allocate up to \$7,500,000 to these businesses for these tax credits and exemptions.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 17 (1) (d) of 2005 Wisconsin Act 479, this rule will remain in effect until January 1, 2008, or until the Department reports its certifications and determinations under this rule to the Department of Revenue, whichever is sooner.

The rules specify who is eligible for the income and franchise tax credits and the sales and use tax exemptions in this program, for Internet equipment used in the broadband market. Eligible equipment is also specified, along with how to apply for the certifications and allocations. Parameters for allocating the authorized total of \$7,500,000 are likewise specified. These parameters emphasize (1) efficiently initiating broadband Internet service in areas of Wisconsin that otherwise are not expected to soon receive this service, and (2) encouraging economic or community development. The rule chapter also describes the time-specific legislative oversight that is established in 2005 Act 479 for these allocations, and describes the follow-up reports that the Act requires from every person who receives a sales or use tax exemption under this chapter.

Publication Date: February 20, 2007
Effective Date: February 20, 2007
Expiration Date: See section 17 (1) (d) 2005
 Wis. Act 479
Hearing Date: March 26, 2007

Elections Board

Rules adopted creating **s. ElBd 3.50**, relating to pricing of voter information available from the Statewide Voter Registration System.

Exemption From Finding of Emergency

The Elections Board finds that under Section 180 of the non-statutory provisions of 2005 Wisconsin Act 451, in subsection (4), the Elections Board may promulgate emergency rules under s. 227.24, Stats., implementing s. 6.36 (6), Stats., as created by Wisconsin Act 451. Notwithstanding s. 227.24 (1) (c) and (2), Stats., emergency rules promulgated under subsection (4) remain in effect until the date on which permanent rules take effect. Notwithstanding s. 227.24 (1) (a) and (3), Stats., the Elections Board is not required to provide evidence that promulgating a rule under subsection (4) as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under subsection (4).

This amended rule interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats. The rule requires that persons who request copies of information from the Statewide Voter registration System must pay, for each such copy, a charge calculated under the provisions of the rule.

At the present time, the Elections Board is limited, in the fee that it can charge for information provided by the Statewide Voter registration System, to the fee set by s. 19.35 (3), Stats.: “the actual, necessary, and direct cost of reproduction and transcription of the record.” In order to recover both the cost of reproduction and the cost of maintaining the list at the state and local level, rather than having its charge be limited to the amount currently provided under the public records law, the Board needs an immediate rule reflecting both cost components required by the new statute.

Publication Date: May 12, 2007
Effective Date: May 12, 2007
Expiration Date: See section 180 (4), 2005
 Wis. Act 451
Hearing Date: June 11, 2007

Health and Family Services (Community Services, Chs. HFS 30—)

Rules adopted revising **ch. HFS 51**, relating to the adoption of children to include preadoption training requirements that will apply to private adoptions, international adoption, and adoptions of children with special needs and affecting small businesses.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

On April 10, 2006, the Wisconsin State Legislature enacted 2005 Wisconsin Act 293, which amended s. 48.84, Stats., to

require first-time adoptive parents to receive preadoption training before a child may be placed for adoption by a court pursuant to s. 48.833, Stats., or before a prospective adoptive parent may petition for placement of a child for adoption under s. 48.837, Stats., or before a proposed adoptive parent may bring a child into Wisconsin for an international adoption under s. 48.839, Stats. The Act further requires the Department to promulgate rules that establish the number of hours and topics covered in the training of first-time adoptive parents. The training must cover issues that may confront adoptive parents in general and that may confront adoptive parents of special needs or international children.

The Act requires the rules to be effective April 1, 2007. Because the rules apply not only to the Department which administers the special needs adoption program with the assistance of private agencies under contract with the Department, and with the cooperation of county human and social service agencies, but also to private agencies that handle domestic adoptions and international adoptions, the Department has invested a significant amount of time gathering information from agencies regarding what training is currently provided to preadoptive parents. The Department conducted written and follow-up telephone surveys with private agencies to determine what content was currently being taught, and the format used for training. The Department's Adoption Services Committee met over several months to determine the curriculum for special needs adoption, the competencies that would be required for all training programs, the number of hours and the documentation that would be required in the training. In addition, the Department reviewed the proposed Hague Convention (federal) training requirements for proposed adoptive parents of international children to assure that Wisconsin's training requirements for first-time pre-adoptive parents would meet or exceed those requirements.

As a result of this extensive collaboration with stakeholders, development of the proposed training requirements has been unusually long and now requires the training requirements to be implemented as an emergency rule in order to meet the legislated date of April 1, 2007, the date adoptive parents must begin receiving preadoptive training.

This emergency rules are substantially similar to the proposed permanent rules except in the hours of training required. Under the emergency order, adoption agencies are required to provide adoptive parents with 2 hours of orientation and 10 hours of training. The proposed permanent rule requires adoption agencies to provide 2 hours of orientation and 16 hours of training. Stakeholder agencies have indicated that the additional 5 months under the emergency rule will allow them to prepare all proposed adoptive parents to meet the orientation and training requirements under the proposed permanent rules.

Publication Date: March 31, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007
Hearing Date: April 27, 2007

Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted revising **ch. HFS 107**, relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public, health, safety and welfare. The facts constituting the emergency are as follows:

A recent revision to s. HFS 107.07 (2), the prior authorization subsection of the dental services section of the Medicaid Administrative Code, caused a result which was not intended by the Department. To correct this error, the Department is promulgating rules to clarify that the Department's intent is to require prior authorization for orthodontia and other services provided under early and periodic screening, diagnosis and treatment (EPSDT) services. The medical necessity of these services is determined by the Department based on information submitted by the provider. Thus, it is necessary to require prior authorization to determine the appropriateness of providing these services to an individual recipient.

In the previous rulemaking (Clearinghouse Rule 05-033) the prior authorization requirement was removed for most procedures that had high rates of approval (greater than 75%). The change was intended to reduce the staff time required for dental offices to process prior authorization requests. The Department did not intend to remove the requirement for prior authorization for orthodontia and other services. The Department specifically stated, in Clearinghouse Rule 05-033, that "Procedures where appropriate pricing requires a high degree of clinical knowledge (e.g., orthodontics and TMJ surgery), and procedures with strict time limitations (e.g., dentures) are also proposed to retain prior authorization."

The language that was adopted, however, has been interpreted by at least one dentist to mean that prior authorization is no longer required to provide orthodontia to recipients. This interpretation was upheld by an administrative law judge in an administrative hearing. The Department believes that the interpretation of the administrative law judge could open up the Department to being required to pay for procedures that are purely cosmetic. Because the intent of the Department and the language adopted, as recently interpreted, had opposite effects, the Department is promulgating rules to revise section s. HFS 107.07 to clarify the intent of the rule.

A basic concept of the Medicaid program is that services must be medically necessary to be reimbursable. Allowing the existing rule language to remain in its present form could require reimbursement for orthodontia that is not medically justified.

Publication Date: April 30, 2007
Effective Date: April 30, 2007
Expiration Date: September 27, 2007

Natural Resources (5) (Fish and Game, etc., Chs. NR 1—)

1. Rules adopted amending **s. NR 1.21** and creating **s. NR 1.26**, relating to contracting for timber sale establishment services on state land.

Exemption From Finding of Emergency

As provided in section 13 of 2005 Wis. Act 166, "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide a finding of emergency for a rule promulgated under this subsection."

Section 1 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services, including prequalification of bidders based on experience with timber sales and related forest inventory work. Section 2 makes technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of training equivalent to that obtained at a college accredited by the Society of American Foresters.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

- Rules adopted creating s. NR 45.075, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Exemption From Finding of Emergency

As provided in section 13 of 2005 Wis. Act 166, notwithstanding s. 227.24, Stats., the Department is not required to provide a finding of emergency for this rule and the emergency rule will remain in effect until a permanent rule is promulgated.

Rule FR-11-07(E) specifies those emergencies on forested land under the jurisdiction of the department over which the chief state forester shall have management authority. This rule describes causes of unforeseen damage or threat of damage to trees that could lead the chief state forester to declare an emergency and assume management authority. Included in the list of damaging agents that could lead to the declaration of an emergency are those required by the legislature: invasive species, pest infestation, disease, and damage to timber from fire, snow, hail, ice, or wind. The rule states that when declaring and responding to an emergency, the chief state forester shall consider the purpose of and management plan for the affected property in his or her decisions. This rule, however, would allow the chief state forester to take actions not described in the management plan for a property if that were the most appropriate response to the emergency. Finally, this rule describes the processes by which the declaration of the state of emergency shall be made effective, canceled or modified.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

- Rules adopted revising chs. NR 19 and 20, relating to the control of fish diseases and invasive species.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable"

disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

Publication Date: April 8, 2007
Effective Date: April 8, 2007
Expiration Date: September 5, 2007
Hearing Date: May 3, 10 and 17, 2007

- Rules adopted revising chs. NR 19 and 20, relating to the control of fish diseases and invasive species.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

This emergency rule clarifies and expands the emergency rules put into effect on April 8, 2007.

Publication Date: May 2, 2007
Effective Date: May 2, 2007
Expiration Date: September 5, 2007
Hearing Date: June 11, 2007

- Rules adopted revising emergency rules affecting chs. NR 19 and 20 relating to control of fish diseases and invasive species.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable"

disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts were infected with the VHS virus. Earlier VHS had been discovered in the Great Lakes, and was known to be moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish disease to reach the Mississippi drainage basin. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDAAPHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from infected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in Wisconsin is therefore a threat to the public health or safety or to the environment.

Publication Date: May 27, 2007
Effective Date: May 27, 2007
Expiration Date: September 5, 2007

Transportation

Rules adopted revising **ch. Trans 276**, relating to allowing the operation of certain 2-vehicle combinations on certain highways without a permit.

Exemption From Finding of Emergency

The Legislature, by Section 7 of 2005 Wis. Act 363, provides an exemption from a finding of emergency for the adoption of the rule.

Plain language analysis

Section 348.07 (1), Stats., historically has limited vehicle lengths on Wisconsin highways to 65 feet. Section 348.07(2), Stats., allowed vehicles meeting the specifications of that subsection to operate without permits despite exceeding the 65-foot limit of subsection (1).

2005 Wis. Act 363 amended s. 348.07, Stats., and essentially made 75 feet the default permitted length on the state trunk highway system. Wisconsin's old default 65-foot overall length limit still applies on all local roads but only applies to state trunk highways that are designated as 65-foot restricted routes by the Department. This emergency rule making establishes a preliminary list of such "65-foot restricted routes."

Prior to Act 363, s. 348.07 (4), Stats., permitted the Department to designate "long truck routes" upon which no overall length limits apply. The Department designates the state's long truck routes in s. Trans 276.07. This rule making does not affect those longstanding designations.

The new "default" 75-foot overall length limit applies on state highways that are neither designated as 65-foot restricted routes under this rule making nor long truck routes under s. Trans 276.07.

Definitions have been added to the rule to make it easier to identify the nature of designations made by the Department in Ch. Trans 276.

In drafting this rule the Department noticed several items that it believes may be of special interest to the legislature and which, in the Department's view, deserve special legislative attention. First, Act 363 did not grant any authority for 75-foot vehicles using the new 75-foot routes to leave those

routes to reach fuel, food, maintenance, repair, rest, staging, terminal or vehicle assembly facilities or points of loading or unloading. The Department does not believe this oversight was intentional and, on an emergency basis, has designated the intersection of each 75-foot route and any other highway as a long truck route under its authority in s. 348.07 (4), Stats. This will permit trucks to exceed the 65-foot default length limit on local roads to access such facilities and make deliveries. The Department encourages the legislature to consider statutorily establishing access rights for vehicles using 75-foot restricted routes.

The second consequence of Act 363 the Department has discovered in drafting this emergency rule is that one statute that formerly restricted double-bottom tractor-trailer combinations to the state's long-truck network was repealed by the deletion of the reference to s. 348.07 (2) (gm), Stats., by the Act's amendment of s. 348.07 (4), Stats. Under the amended statute, as revised by Act 363, it might appear to a reader that double bottom trucks of unlimited length may operate upon any highway in the state, including local roads and streets, without permits. Section 348.08 (1) (e), Stats., however, continues to provide that double-bottom trucks be restricted to highways designated by the department under s. 348.07 (4). WisDOT believes this provision continues to limit double-bottom operation to long truck routes designated by the Department under s. 348.07 (4), Stats. WisDOT would suggest the deleted reference to (2) (gm) in 348.07 (4), Stats., be re-inserted into the statute to avoid confusion.

Finally, the Department notes that s. 348.07, Stats., is becoming difficult to decipher from a legal standpoint because of the many amendments that have been made to it over the years. It may be that recodifying the statute for the purpose of clarification of the length limitations of Wisconsin law would be helpful to truck and long vehicle operators in this state.

Publication Date: September 15, 2006
Effective Date: September 15, 2006
Expiration Date: See section 7 (2) of 2005 Wis. Act 363
Hearing Date: October 4, 2006

Workforce Development (2) (Workforce Solutions, Chs. DWD 11 to 59)

1. Rules adopted revising **s. DWD 56.06**, relating to child care rates and affecting small businesses.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The child care subsidy budget estimates that the child care subsidy program will have a tight budget by the end of fiscal year 06-07. This is due to flat federal funding, rising caseload, and increased provider costs. To begin to address the tight budget, the Department will not increase the child care subsidy maximum rates for 2007. This emergency rule will maintain the maximum rates at 2006 levels.

Publication Date: January 22, 2007
Effective Date: January 22, 2007
Expiration Date: June 21, 2007
Hearing Date: May 7, 2007

2. Rules adopted revising **ch. DWD 56**, relating to child care enrollment underutilization.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The child care subsidy budget is expected to have a substantial deficit by the end of state fiscal year 2006–07. While many factors will have an impact on the program's final fiscal balance, current spending patterns at current rates suggest that the program will exceed its 06–07 budget authorization by approximately \$46 million. This rule will provide for more efficient use of the program's limited funding.

Publication Date: April 1, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007

**Workforce Development
(Public Works Construction,
Chs. DWD 290–294)**

Rules adopted amending **s. DWD 290.155 (1)**, relating to

the adjustment of thresholds for application of prevailing wage rates.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

Publication Date: December 28, 2006
Effective Date: January 1, 2007
Expiration Date: May 31, 2007
Hearing Date: February 19, 2007
Extension Through: June 29, 2007

Submittal of rules to legislative council clearinghouse

*Please check the Bulletin of Proceedings – Administrative Rules
for further information on a particular rule.*

Cemetery Board

On May 17, 2007, the Cemetery Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: s. 227.11 (2), Stats., and s. 440.905, Stats., as created by 2005 Wisconsin Act 25.

The proposed rule-making order relates to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 19, 2007, at 9:45 a.m., in Room 121A, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

Pamela Haack
Paralegal, Office of Legal Counsel
(608) 266-0495
Pamela.haack@drl.state.wi.us

Funeral Directors Examining Board

On May 17, 2007, the Funeral Directors Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 445.03, Stats.

The proposed rule-making order relates to continuing education requirements.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 7, 2007 at 9:45 a.m. in Room 121A, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

Pamela Haack
Paralegal, Office of Legal Counsel
(608) 266-0495
Pamela.haack@drl.state.wi.us

Health and Family Services

On May 21, 2007, the Department of Health and Family Services submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The repeal of ch. HFS 119, relating to the Health Insurance Risk-Sharing Plan.

Agency Procedure for Promulgation

The repeal of ch. HFS 119 is in conformity with 2005 Act 74, therefore, the Department under s. 227.16 (2) (b), Stats., will not hold a public hearing concerning this matter.

Contact Persons

DHFS contact person:
Rosie Greer
DHFS
P.O. Box 7850
Madison, WI 53707-7850
608-266-1279

Submit questions about HIRSP or the HIRSP Plan Authority to:

Josh Weisbrod
HIRSP Plan Authority
(608) 441-5777
jweisbrod@hirsp.org

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

On May 17, 2007, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 457.03, Stats.

The proposed rule-making order relates to training licenses for professional counselors.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 31, 2007 at 1:15 p.m. in Room 121A, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

Pamela Haack
Paralegal, Office of Legal Counsel
(608) 266-0495
Pamela.haack@drl.state.wi.us

Marriage and Family Therapy, Professional Counseling and Social Work Examining Board

On May 17, 2007, the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) , 440.035 (1) and 457.11, Stats.

The proposed rule-making order relates to training licenses for marriage and family therapists.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 30, 2007 at 9:15 a.m. in Room 121A, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

Pamela Haack
Paralegal, Office of Legal Counsel
(608) 266-0495
Pamela.haack@drl.state.wi.us

Natural Resources

On April 27, 2007 the Department of Natural Resources submitted a proposed rule to the Legislative Council Rule Clearinghouse.

Analysis

The revision of chs. NR 400, 406, 407, 410 and 439, relating to construction permits, stock test requirements and affecting small business.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 12, 2007. The Bureau of Air Management is responsible for promulgation of the rules.

Contact Information

Joe Brehm
Bureau of Air Management
(608) 267-7541

Natural Resources

On May 15, 2007 the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The revision of chs. NR 460, 466 and 484, relating to national emission standards for hazardous air pollutants for paper and other web surface coating processes.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 12, 2007. The Bureau of Air Management is responsible for promulgation of the rules.

Contact Information

Eric Mosher
Bureau of Air Management
(608) 266-3010

Transportation

On May 22, 2007 the Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Revision of ch. Trans 28, relating to Harbor Assistance Program.

Agency Procedure for Promulgation

A public hearing is required and will be held on June 29, 2007. The Division of Transportation Investment Management, Bureau of Transit, Local Roads, Rails and Harbors is responsible for promulgation of the rules.

Contact Information

Julie Johnson
Paralegal, Department of Transportation
(608) 266-8810

Veterinary Examining Board

On May 17, 2007, the Veterinary Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory Authority: ss. 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

The proposed rule-making order relates to continuing education, informed consent and recordkeeping.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 8, 2007 at 10:00 a.m. in Room 121A, 1400 East Washington Avenue, Madison, Wisconsin.

Contact Person

Pamela Haack
Paralegal, Office of Legal Counsel
(608) 266-0495
Pamela.haack@drl.state.wi.us

Workforce Development

On May 30, 2007, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: s. 108.14 (2) and 227.11 (2)(a), Stats.

The proposed rules affect ch. DWD 128, relating to unemployment insurance rules for determining a claimant's ability and availability for work and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on July 18, 2007. The organizational unit responsible for the promulgation of the proposed rules is the DWD Unemployment Insurance Division.

Contact Information

Elaine Pridgen
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Rule-making notices

Notice of Hearing

Agriculture, Trade and Consumer Protection

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on its emergency rule, s. ATCP 21.20, Wis. Adm. Code, relating to voluntary certification of firewood dealers.

DATCP will hold one public hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until Tuesday, July 9, 2007 for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, to Robert.dahl@datcp.state.wi.us or at <https://apps4.dhfs.state.wi.us/admrules/public/home>.

You may obtain a free copy of this emergency rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4573 or emailing robert.dahl@datcp.state.wi.us. Copies will also be available at the hearing. To view the emergency rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>.

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator, Keeley Moll, at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by June 25, 2007, by writing to Deb Bollig, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4584. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facility is handicap accessible.

Hearing Date and Location

Tuesday, June 26, 2007

1:00 p.m. to 3:00 p.m.

Dept. of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, Board Room (CR-106)
Madison, Wisconsin, 53718-6777

Analysis Prepared by Dept. of Agriculture, Trade and Consumer Protection

This emergency rule creates a voluntary certification program for firewood dealers. Under this rule, the Department of Agriculture, Trade and Consumer Protection ("DATCP") may certify firewood dealers who agree to treat firewood according to rule standards to eliminate potential infestations of Emerald Ash Borer and other pests. A firewood dealer is not required to be certified under this rule in order to sell firewood in this state.

DATCP is adopting this temporary emergency rule pending the adoption of "permanent" rules on the same subject. This emergency rule will take effect immediately

upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature's Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 additional days.

Statutory Authority: ss. 93.06 (1p), 93.07 (1), 93.07 (12) and 94.01 Stats.

Statutes Interpreted: ss. 93.06 (1p), 93.07(12) and 94.01, Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has broad general authority, under ss. 93.06(1p), 93.07(12) and 94.01, Stats., to adopt regulations to prevent and control plant pest infestations. The voluntary certification program created by this rule is part of an overall state strategy to prevent and control plant pest infestations, including Emerald Ash Borer infestations.

Background. Emerald Ash Borer and other major pests are carried by firewood. The Wisconsin Department of Natural Resources (DNR) has adopted rules, under NR 45, to restrict the entry of firewood into Wisconsin state parks. The DNR rules prohibit, in state parks, firewood originating from outside this state. The DNR rules also prohibit firewood originating more than 50 miles from the state park unless the firewood originates from a firewood dealer who is certified by DATCP.

This rule creates a DATCP program for certification of firewood dealers. Firewood dealers certified under this rule could supply firewood to Wisconsin state parks. The certification program would be open to all firewood dealers in the state, regardless of whether they supply firewood to Wisconsin state parks. Certified firewood dealers must comply with this rule. A firewood dealer is not required to be certified under this rule in order to sell firewood in this state.

Emergency Rule. Under this emergency rule, DATCP may annually certify a firewood dealer. An annual certification expires on December 31 of each year. A firewood dealer is not required to be certified in order to sell or distribute firewood in this state. There is no charge for certification. Certification permits a firewood dealer to supply firewood to Wisconsin state parks, pursuant to NR 45.04 (1) (g).

DATCP may certify a firewood dealer if all of the following apply:

- The firewood dealer submits a complete application that complies with this rule.
- DATCP inspects all of the business premises identified in the certification application and determines, based on that inspection, that the firewood dealer is equipped to fulfill all of the representations included in the certification application.

A certification application must include all of the following:

- The correct legal name of the firewood dealer, and any trade names under which the firewood dealer sells or distributes firewood in this state.

The address of the firewood dealer's business headquarters.

The address of every business location from which the firewood dealer sells or distributes firewood in this state.

The approximate annual volume of firewood that the firewood dealer sells or distributes in this state, including the approximate annual volume sold or distributed from each business location.

The sources from which the firewood dealer obtains firewood for sale or distribution in this state. The application shall include the name and address of each person, if any, from whom the firewood dealer procures cut firewood.

A certification application must also include the following statement (the firewood dealer must notify DATCP if, at any time before or after the firewood dealer is certified, the statement is no longer accurate):

“All firewood that the applicant sells or distributes in this state is from trees grown and cut in this state. All of the firewood is treated in at least one of the following ways prior to sale or distribution in this state:

- 1. Each piece of firewood is heated to a temperature at least 160° F. (71.1° C.) at the center of the piece, and is maintained at that temperature for at least 75 minutes.**
- 2. All bark, and additional wood to a depth of at least ½ inch beneath the bark, is removed from each piece of firewood.**
- 3. The firewood is stored on the firewood dealer’s premises for at least 2 years before it is sold or distributed in this state.**
- 4. The firewood is fumigated with a registered fumigant pesticide, according to the pesticide label, to kill all insect pests that may inhabit the firewood.**
- 5. The firewood is treated in a manner approved, in writing, by the Wisconsin Department of Agriculture, Trade and Consumer Protection, to kill all insect pests that may inhabit the firewood.”**

DATCP must grant or deny a certification application within 60 business days after DATCP receives a complete application. DATCP may withdraw a certification if the applicant materially misrepresents any information in the application, or fails to honor any of the commitments made in the application. A certification does not constitute a warranty, by the department, that firewood is free of pests.

Fiscal Impact

The state fiscal impact of this rule depends on the number of firewood dealers who apply for certification. There are thousands of firewood dealers in Wisconsin, but few of them will have a strong incentive to be certified under this rule. DATCP assumes that, at least initially, certification will be attractive mainly for large firewood dealers who can afford to implement the firewood treatment regimen required for certification.

Certification may be especially attractive for large firewood dealers who wish to supply firewood to Wisconsin state parks. DNR rules prohibit a firewood dealer from supplying firewood to a state park located more than 50 miles away, unless the firewood dealer is certified under this rule.

DATCP projects approximately one day of staff time to process each certification application and to inspect the firewood dealer’s business premises. DATCP will incur inspector travel costs, but will attempt to minimize those costs by integrating inspections with other inspections. DATCP does not plan to do routine follow-up inspections, but may conduct occasional random inspections of certified firewood dealers.

DATCP assumes that approximately 30 firewood dealers will apply for certification under this emergency rule, for calendar year 2007. If that assumption is correct, DATCP will

be able to absorb the projected workload and costs within DATCP’s current budget and with current staff. However, if many more firewood dealers apply for certification, DATCP will need additional budget and staff to process applications and conduct required inspections.

Business Impact

This rule will not have a significant impact on firewood dealers in this state. This rule does not require firewood dealers to be certified, nor does it restrict the sale or distribution of firewood by uncertified dealers. This rule creates a voluntary certification program, which may benefit some firewood dealers in this state.

DNR rules prohibit a firewood dealer from supplying firewood to a state park located more than 50 miles away, unless the firewood dealer is certified by DATCP. This rule will allow certified firewood dealers to supply firewood to state parks throughout the state, regardless of the firewood dealer’s distance from the park. This rule will primarily benefit large firewood dealers who can afford to implement the firewood treatment regimen required for certification.

This rule does not authorize or prohibit imports of firewood from outside this state. Current DATCP rules under ATCP 21.17 prohibit imports of firewood from areas which the U.S. department of agriculture has formally designated as being infested with certain wood pests, such as Emerald Ash Borer. DNR rules under NR 45.04(1)(g) prohibit imports of firewood to Wisconsin state parks from any location outside this state. This rule does not create an exemption to any of these existing rules. Certification under this rule is available only to firewood dealers who obtain all of their firewood from trees grown and cut in this state.

Environmental Impact

This rule will not have a significant impact on the environment. This rule does not restrict the sale or movement of firewood in this state. This rule will allow some firewood in state parks that would otherwise be prohibited by DNR rules, but only if the wood comes from a certified dealer who agrees to treat the wood to destroy plant pests such as Emerald Ash Borer. DATCP will inspect at least annually to verify that the firewood dealer has the necessary facilities and equipment to honor the agreement.

Federal Programs

Under the federal Plant Protection Act, the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA-APHIS) has responsibility for excluding, eradicating and controlling serious plant pests, including the Emerald Ash Borer. USDA-APHIS has instituted statewide quarantines on the movement of ash wood for Illinois, Indiana and Ohio, in addition to the Lower Peninsula of Michigan. These quarantines include restrictions on the interstate movement of any hardwood (non-coniferous) firewood, and are in addition to the regulations adopted by each state related to the movement of firewood. Firewood cannot be moved from a quarantined area unless it is accompanied by an APHIS certificate that shows the firewood to be free of infested wood.

Surrounding State Programs

Surrounding states where EAB has been identified (Illinois, Indiana, Ohio and Michigan) have state and federal quarantines that prohibit the movement of regulated articles, including all hardwood firewood, out of quarantined areas. Firewood can only move out of quarantined areas after it is certified by USDA. Other surrounding states, such as Minnesota and Iowa, are conducting information and education campaigns about the danger of moving firewood and are considering regulatory options for dealing with firewood movement.

Notice of Hearing

Commerce

(Licenses, Certifications, etc., Ch. Comm 5)

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1), 101.982, 101.988 (2), and 227.24 (4) Stats., the Department of Commerce will hold a public hearing on emergency rules under chapter Comm 5 relating to the licensing of elevator contractors and installers.

Hearing Date and Location:

Wednesday, June 27, 2007, at 9:30 a.m.

Conference Room 3C

Thompson Commerce Center

201 West Washington Avenue

Madison, WI

Interested persons are invited to appear at the hearing and present comments on the emergency rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on the emergency rules will remain open until July 6, 2007, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

The emergency rules and an analysis of the rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at roberta.ward@wisconsin.gov, or at telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

The small business regulatory coordinator for the Department of Commerce is Carol Dunn, who may be contacted at telephone (608) 267-0297, or Email at carol.dunn@wisconsin.gov.

Notice of Proposed Rulemaking

Health and Family Services

(Health, Chs. HFS 110—)

[CR 07-053]

NOTICE IS HEREBY GIVEN that under 2005 Act 74, the Department of Health and Family Services (Department) will repeal ch. HFS 119, relating to the Health Insurance Risk-sharing Plan. Because the repeal of ch. HFS 119 is in conformity with 2005 Act 74, the Department, under s. 227.16 (2) (b), Stats., will not hold a public hearing concerning this matter.

Analysis Prepared by Department of Health and Family Services

Effective July 1, 2006, the Department's authority to operate the Health Insurance Risk-Sharing Plan (HIRSP) was transferred, under 2005 Act 74, to the Health Insurance Risk-Sharing Plan Authority. Repeal of ch. HFS 119 is, therefore, required.

Text of Proposed Rule

The full text of the order to repeal ch. HFS 119 is as follows:

SECTION 1. Ch. HFS 119 is repealed.

Fiscal Estimate

The order to repeal ch. HFS 119, will not result in a fiscal impact that is independent of that identified in the fiscal estimate made by the Department for 2005 Assembly Bill 844, creating 2005 Act 74.

A copy of the full text of the fiscal estimate may be obtained at no charge at the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>.

Initial Regulatory Flexibility Analysis

Not applicable.

Contact Person

Rosie Greer

DHFS

P.O. Box 7850

Madison, WI 53707-7850

608-266-1279

Because this is an order to repeal a rule that under 2005 Act 74, the Department no longer has the authority to promulgate or implement rules relating to HIRSP, a public hearing will not be held on this matter. Questions about this order may be submitted to the contact person listed above. **Submit questions about HIRSP or the HIRSP Plan Authority to:**

Josh Weisbrod

HIRSP Plan Authority

(608) 441-5777

jweisbrod@hirsp.org

Notice of Hearing

Revenue

[CR 07-033]

Notice is hereby given that, pursuant to s. 227.11(2)(a), Stats., and interpreting s. 125.68 (10) (bs), Stats., the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the amendment of ch. Tax 8, relating to reciprocal interstate shipments of wine.

Hearing Information

The hearing will be held at **9:00 A.M. on Thursday, June 28, 2007**, in the Events Room (1st floor) of the State Revenue Building, located at 2135 Rimrock Road, Madison, Wisconsin.

Handicap access is available at the hearing location.

Comments on the Rule

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the department at the hearing. Written comments may also be submitted to the contact person shown below no later than July 5, 2007, and will be given the same consideration as testimony presented at the hearing.

Contact Person*Small Businesses:*

Tom Ourada
 Department of Revenue
 Mail Stop 624-A
 2135 Rimrock Road
 P.O. Box 8933
 Madison, WI 53708-8933
 (608) 266-8875
tourada@dor.state.wi.us

Others:

Dale Kleven
 Department of Revenue
 Mail Stop 6-40
 2135 Rimrock Road
 P.O. Box 8933
 Madison, WI 53708-8933
 (608) 266-8253
dkleven@dor.state.wi.us

Analysis by the Department of Revenue

Statute interpreted: s. 125.68(10)(bs), Stats.

Statutory authority: s. 227.11(2)(a), Stats.

Explanation of agency authority: Section 227.11(2)(a), Stats., provides that each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: There are no other applicable statutes or rules.

Plain language analysis: This proposed rule order amends a provision specifying the amount of wine an individual may receive per year from a winery in a reciprocal state. Based on a statutory change, this amount was increased from 9 liters to 27 liters. The proposed rule order also makes changes to reflect a change in title of a liquor tax reporting form and provide current contact information for obtaining the form.

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: Section 125.68 (10) (bs), Wis. Stats., was amended by 2005 Act 25 to increase the amount of wine an individual may receive per year from a winery in a reciprocal state from 9 liters to 27 liters. The department has created this proposed rule order to reflect this statutory change.

Analysis and Supporting Documents used to Determine Effect on Small Business: The proposed rule reflects a statutory change relating to shipments of wine between Wisconsin and states with which Wisconsin has a reciprocal agreement described in s. 139.035, Stats. As the proposed rule does not impose any significant financial or other compliance burden, the department has determined that it 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.

Written Comments

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

Text of Rule

SECTION 1. Tax 8.24(1)(a)3. is amended to read:

Tax 8.24(1)(a)3. No more than 9 27 liters are received by any one individual during a calendar year.

SECTION 2. Tax 8.24(6) is amended to read:

Tax 8.24 (6). REPORTING REQUIREMENTS BY WISCONSIN WINERIES. Every winery located in Wisconsin that ships wine to another state as described in this section shall report those sales on Wisconsin form AB-131, Wisconsin Liquor Tax Multiple Tax Schedule, as tax-paid sales. A description of each sale shall appear on the report.

Note to Revisor: Replace the first note at the end of Tax 8.24(6) with the following:

Note: Form AB-131 may be obtained by calling (608) 266-1961; by writing to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 5-77, PO Box 8949, Madison WI 53708-8949; or by accessing the department's web site at www.revenue.wi.gov.

Initial Regulatory Flexibility Analysis

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

Fiscal Estimate

Under the proposed rule, the quantity of wine shipped to individuals in Wisconsin is expected to increase by an unknown amount. Although the wine tax is paid by the shipper to the state from which the wine is being shipped, the Department does not expect any significant reduction in tax revenues since the occupational tax rate on wine is quite small - 6.605¢ per liter (for wine with 14% or less of alcohol by volume). In addition, while the rule may cause some minor reduction in wine sales on which sales taxes are collected, this impact is also expected to be minimal.

The proposed rule does not impose any significant financial and compliance burden on the department.

Notice of Hearing**Transportation**

[CR 07-052]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.095, 85.16(1) and 227.11(2), Stats., and interpreting s. 85.095, Stats., as amended by 2003 Wis. Act 208, the Department of

Transportation will hold a public hearing in Room 701 (Waukesha Conference Room) of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **29th** day of **June**, 2007, at **10:30 AM**, to consider the amendment of ch. Trans 28, Wis. Adm. Code, relating to the harbor assistance program.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 85.095, Stats., as amended by 2003 Wis. Act 208

Statutory authority: ss. 85.095, 85.16 (1) and 227.11 (2), Stats.

Explanation of agency authority: The Wisconsin Department of Transportation administers the Wisconsin Harbor Assistance Program, pursuant to s. 85.095, Stats. Chapter Trans 28 prescribes the administrative policies and procedures for implementing the Harbor Assistance Program authorized by s. 85.095, Stats.

Related statute or rule: There are no related statutes or rules other than those listed above.

Plain language analysis: 2003 Wis. Act 208 amended s. 85.095, Stats., to open the Wisconsin Harbor Assistance Program to private and public owners of harbors operating commercial transportation facilities. When such facilities are taken out of commercial use, there remains a need to maintain the wharf along such a property to ensure the integrity of the harbor's commercial navigation channel. Allowing Harbor Assistance Program grants to be used to rehabilitate such facilities would help protect the navigation channels and enhance public access to waterfront resources.

Summary of federal regulation: There are no comparable federal laws or regulations.

Comparison with rules in the following states:

Michigan: Harbor assistance in Michigan takes the form of operating and capital assistance to port authorities that oversee ferryboat operations. The capital assistance is found in the marine capital line of the state budget.

Minnesota: Minnesota created a Port Development Assistance Program in 1996. Their program is patterned after the Wisconsin Harbor Assistance Program in that it uses both state funds and bonding authority to fund infrastructure improvement projects.

Illinois: None.

Iowa: None.

Summary of factual data and analytical methodologies: No data or analytical methodology was employed in considering this rule making.

Effect on Small Business

This proposed rule will have no significant adverse impact on small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal Effect

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized

tribes or bands, unless they sponsor a project and subsequently sign a grant agreement committing themselves to pay the required matching share.

Anticipated costs incurred by private sector

The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities unless they sponsor a project and subsequently sign a grant agreement committing themselves to pay the required matching share.

Agency contact person and place where comments are to be submitted and deadline for submission:

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Larry Kieck, Department of Transportation, Harbors and Waterways Program, Room 701, P. O. Box 7914, Madison, WI 53707-7914. You may also contact Mr. Kieck by phone at (608) 267-9319.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Notice of Hearing Workforce Development (Unemployment Insurance) [CR 07-054]

NOTICE IS HEREBY GIVEN that pursuant to ss. 108.14 (2) and s. 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules affecting ch. DWD 128, relating to unemployment insurance rules for determining a claimant's ability and availability for work and affecting small businesses.

Hearing Information

Wednesday, July 18, 2007, at 1:30 p.m.

GEF #1, Room A415

201 E. Washington Avenue

Madison, WI

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 108.14 (2) and 227.11, Stats.

Statutes interpreted: Sections 108.04 (2) (a) 1., 108.04 (1) (b) 1., 108.04 (7) (c), 108.04 (8) (e), Stats.

Related statutes and rules: Sections 108.04 (2) (a) 2. and 3. and 108.04 (2) (b), Stats.; Chapters DWD 126 and 127

Explanation of agency authority. To be eligible to receive unemployment insurance benefits, an individual must, in addition to other requirements, be “able” to perform suitable work and be “available” for suitable work.

Section 108.04 (2) (a) 1., Stats., provides that a claimant shall be eligible for benefits for any week of total unemployment only if the claimant is able to work and available for work during the week.

Section 108.04 (1) (b) 1., Stats., provides that an employee is ineligible for benefits while the employee is unable to work, or unavailable for work, if his or her employment with an employer was suspended by the employee or by the employer or was terminated by the employer because the employee was unable to do, or unavailable for, suitable work otherwise available with the employer, except in certain circumstances.

Section 108.04 (7) (c), Stats., provides that the disqualification for an employee’s voluntary termination of work does not apply if the department determines that the employee terminated his or her work but had no reasonable alternative because the employee was unable to do his or her work or because of the health of a member of his or her immediate family; but if the department determines that the employee is unable to work or unavailable for work, the employee is ineligible to receive benefits while the inability or unavailability continues.

Section 108.04 (8) (e), Stats., provides that if an employee fails to accept suitable work with good cause or return to work with a former employer that recalls the employee with good cause, but the employee is unable to work or unavailable for work, the employee shall be ineligible for the week in which the failure occurred and while the inability or unavailability continues.

Summary of the proposed rule. Under the current Chapter DWD 128, a claimant is not considered “able” to work if the claimant’s physical or psychological ability to work limits the claimant to less than 15% of the opportunities for suitable work in the claimant’s labor market area. A claimant is not considered “available” for work if the claimant restricts his or her availability for work to less than 50% of the full-time opportunities for suitable work. The Department has found that rigid adherence to percentage standards sometimes produces results that are arbitrary and inconsistent. The Department is unaware of any other states that use percentage tests to determine whether a claimant is “able and available” to work.

The Department proposes to amend Chapter DWD 128 to clarify the determination when claimants are able to work and available for work. The proposed rule eliminates the requirement that a claimant be “able” to work 15% of the opportunities for suitable work in the claimant’s labor market area and replaces this with five relevant factors the Department may consider in making the determination whether the claimant is considered to have withdrawn from the labor market due to physical or psychological inability to work and is therefore ineligible for benefits. Appropriate factors include, but are not limited to: (1) the claimant’s usual or customary occupation; (2) the nature of the restrictions; (3) the qualification to do other work based on the claimant’s education, training and experience; (4) the ability to be trained in another occupation; and (5) certain occupational data and reports available to the Department.

The proposed rule also eliminates the requirement that a claimant be “available” for work 50% of the full-time opportunities for suitable work in the claimant’s labor market area and the requirement that first shift full-time work

governs the availability standard for most jobs and replaces this with eight relevant factors the Department may consider in making the determination whether a claimant is considered to have withdrawn from the labor market by restricting his or her availability to work and is therefore ineligible for benefits. These factors include: (1) restrictions on the claimant’s salary or wages; (2) shift and time restrictions; (3) travel and transportation restrictions; (4) incarceration for more than 48 hours in a week; (5) other absence from the labor market for more than 48 hours in a week; (6) the types of work sought; (7) other unreasonable restrictions on the claimant’s working conditions; and (8) occupational and employment conditions data and reports available to the Department.

The proposed rule carries over from federal law the general presumption that a claimant is able and available to work if the claimant is registered to work and does the required work search. The proposed rule will help the Department determine whether a claimant is “able and available” for work based on the claimant’s attachment to, or withdrawal from, the labor market by methods that are more transparent than the percentage standards and are more understandable to claimants and employers.

The proposed rule also deletes the provision that overpayments will not be collected for benefits erroneously paid before issuance of an eligibility determination for a given week, clarifies the difference between refusal of work and availability for work, incorporates the federal standard for proof of alien status, and deletes the grace period for claimants with uncontrollable restrictions as unnecessary in light of the new definition of able to work.

Summary of, and comparison with, existing or proposed federal regulations. The Department of Labor issued a new rule on the able and available requirement on January 16, 2007. The federal rule codifies the longstanding interpretation that the Social Security Act and the Federal Unemployment Tax Act require states to limit payment of unemployment insurance to individuals who are able and available for work. This interpretation had not previously been comprehensively addressed in the federal regulations.

The federal regulation provides that a state may consider an individual to be able to work during the week of unemployment claimed if the individual is able to work for all or portion of the week, provided any limitation on his or her ability to work does not constitute a withdrawal from the labor market.

A state may consider an individual to be available for work during the week of unemployment claimed under any of the following circumstances: (1) the individual is available for any work for all or a portion of the week, provided any limitation does not constitute a withdrawal from the labor market; (2) the individual limits his or her availability to work which is suitable as determined under state law; and (3) the individual is on temporary lay-off and is available to work only for the employer that has temporarily laid-off the individual.

A state may consider an individual to be available for work if the individual is appearing for jury duty under a lawfully issued summons. A state must not deny unemployment benefits to an individual for failure to be available for work if the individual is in approved training. An alien must be legally authorized to work to be considered available for work in the United States.

Comparison with rules in adjacent states: Iowa’s rules provide that to be able to work an individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual’s customary occupation. An individual is available for work if he or she is willing, able, and ready to accept suitable work which the

individual does not have good cause to refuse. An individual may have shift restrictions if the individual is available for the same shift in which his or her wage credits were earned and the individual has a reasonable expectation of securing employment. If a part-time worker is available to the same degree and to the same extent as when his or her wage credits were earned, the individual meets the availability requirement. An individual is available while serving on jury duty. An individual may not be eligible for benefits if the individual has imposed restrictions that leave the individual with no reasonable expectation of securing employment, including restrictions such as type of work, hours, wages, location, or physical restrictions.

The Illinois rules provide that an individual is able to work when physically and mentally capable of performing work for which the individual is otherwise qualified. The focus for ability to work is on the individual's condition; the employers' willingness to hire is irrelevant. The focus also is on any work the individual can perform, not limited to the usual or most recent job. The rule provides that the best evidence that an individual is able to work in a particular occupation is that the individual has performed such work. An individual is available for work unless a condition so narrows opportunities that he has no reasonable prospect of securing work. An individual is unavailable if: domestic circumstances prevent an individual from working during "normal" days and hours in the occupation, the individual demands a wage that is unreasonable, the individual unreasonably restricts the distance the individual is willing to travel to work, or an individual's personal habits are inconsistent with the type of work the individual is seeking. An individual will not be unavailable for refusing to consider work that would violate sincerely held religious or moral convictions. If the individual is self-employed, availability depends on the nature and extent of the self-employment. Whether a seasonal worker is available during the off-season is determined by whether there is some prospect of obtaining work in the individual's customary occupation. When an individual appears to be imposing a condition on acceptance of work, it must be established whether this is a preference or an actual condition on availability. The best evidence that an individual is available for work is that the individual readily secures work despite the imposition of a condition.

Michigan does not have rules on ability and availability for work. Minnesota does not have unemployment insurance rules.

Summary of factual data and analytical methodologies.

The Department has found that rigid adherence to percentage standards sometimes produces results that are arbitrary and inconsistent. The proposed rule will help the Department determine whether a claimant is "able and available" for work based on the claimant's attachment to, or withdrawal from, the labor market by methods that are more transparent than the percentage standards and are more understandable to claimants and employers.

Fiscal Estimate

The proposed rule was developed to promote sound administrative practice and provide more reasonable outcomes for employers and employees than sometimes occur with rigid application of percentage standards under the existing rule. Although the conceptual approach is different, relying on a standard of reasonableness rather than clear percentage standards, only a few of the changes are expected to have a significant fiscal impact, which is identified below.

The proposed rule repeals the prohibition against disqualifying a claimant for any week for which a check has been mailed before resolution of an able and available

eligibility issue affecting that week. Recovering these overpayments is expected to reduce expenditures by \$600,000.

The current rule provides that a claimant must be able to perform at least 15% of all suitable jobs in the claimant's labor market when the claimant's inability to work is due to uncontrollable circumstances. The proposed rule defines inability to work more clearly as physically or psychologically unable to work and would find unable only the claimant who is not able to do any suitable work. Such claimant would still be required to meet all the conditions specified under availability for work. The change is intended to accommodate workers with disabilities. The standard would apply to claimants currently found unable under ss. 108.04 (2), 108.04 (1) (b) 1., 108.04 (7) (c), and 108.04 (8) (e), Stats. The Department's analysis of a sample of claimants denied benefits under s. 108.04 (2), Stats., found the estimated cost of the new standard for such claimants to be \$300,000. Assuming that the experience of individuals denied under ss. 108.04 (1) (b) 1., 108.04 (7) (c), and 108.04 (8) (e), Stats., is proportional to that of those denied under s. 108.04 (2), Stats., the total increase in benefit expenditure would be \$900,000.

The current rule provides that a claimant must be available for first shift, full-time work. The proposed rule provides that the claimant be available to perform full-time work during the standard hours in which work is performed in the occupations for which the claimant has prior training and experience. In determining when work is performed, consideration is given to the hours and length of shift the claimant has worked since the start of the base period; generally, 15 to 18 months before filing a claim. This change is expected to increase expenditures by \$300,000.

Of the net increase in expenditure of \$600,000, the amount of \$576,000 would be incurred by taxable employers and \$24,000 by employers that reimburse the Reserve Fund for benefits paid on behalf of former employees. The estimated cost to local units of government reimbursing the Fund is \$10,200 and the estimated cost to state government is \$5,400.

Effect of rule on small businesses. The rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses. The Department's Small Business Regulatory Coordinator is Jennifer Jirschele, jennifer.jirschele@dwd.state.wi.us, (608) 266-1023.

Analysis used to determine effect on small business: The proposed rule affects how the department will determine whether a claimant is able and available for work. The proposed rule does not add or change any requirements for small businesses. There are no reporting, bookkeeping, or other procedures required for compliance with the proposed rule and no professional skills are required of small businesses.

Agency Contact Person

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

Submission of Comments and Deadline for Comments

An electronic copy of the proposed rules is available at <http://www.dwd.state.wi.us/dwd/hearings.htm>. A copy of the proposed rules is also available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than **July 19, 2007**, will be given the same consideration as testimony presented at the hearing.

Submittal of proposed rules to the legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

Commerce

(CR 06-032)

Ch. Comm 47, relating to usual and customary cost schedule for petroleum environmental cleanup fund awards.

Elections Board

(CR 06-137)

Ch. ElBd 3, relating to election-day voter registration.

Natural Resources

(CR 06-105)

Ch. NR 22, relating to fishing on the boundary waters of Wisconsin and Iowa.

Natural Resources

(CR 07-016)

Chs. NR 428 and 484, relating to implementation of reasonably available control technology (RACT) NO_x emission limitations applicable to major sources in the 8-hour ozone non-attainment area in southeastern Wisconsin.

Transportation

(CR 06-135)

Ch. Trans 138, relating to dealer facilities, records and licenses.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.wisconsin.gov or (608) 266-7275 for updated information on the effective dates for the listed rule orders.

**Commerce
(CR 06-119)**

An order affecting chs. Comm 2 and Others, relating to plan review processing times.
Effective 8-1-07.

**Elections Board
(CR 05-093)**

An order creating ch. ElBd 11, relating to the training and certification of election inspectors.
Effective 7-1-07

**Insurance
(CR 06-117)**

An order affecting ch. Ins 6, relating to underinsured ("UM") and uninsured motorist coverage ("UIM") in personal umbrella, personal excess, commercial

automobile liability and commercial liability policies and affecting small business.
Effective 7-1-07.

**Transportation
(CR 06-099)**

An order affecting Trans 112, relating to medical standards for driver licensing and general standards for school bus endorsements.
Effective 7-1-07.

**Transportation
(CR 06-129)**

An order affecting ch. Trans 276, relating to allowing the operation of certain 2-vehicle combinations on certain highways without a permit.
Effective 7-1-07.

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