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Table of Contents

Emergency Rules Now in Effect.**Pages 3 to 7**

Commerce:

Licenses, Certifications, etc., Ch. Comm 5

Rules relating to licensing of elevator contractors and installers.

Amusement Rides, Ch. Comm 34

Rules relating to amusement ride safety.

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

Rules relating to tax credits and exemptions for internet equipment used in the broadband market.

Dentistry Examining Board:

Rules amending the effective date of an emergency rule that took effect on December 29, 2006, relating to anesthesia administration; and delaying the effective date of the permanent rule.

Elections Board:

Rules relating to pricing of voter information available from the Statewide Voter Registration System.

Health and Family Services:

Medical Assistance, Chs. HFS 100—

Rules relating to benefits covered by the Wis. Medical Assistance program, and affecting small businesses.

Natural Resources:

Fish and Game, etc., Chs. NR 1—

Rules relating to the hook and line harvest of lake sturgeon.

Rules relating to the 2007 migratory game bird seasons and waterfowl hunting zones.

Environmental Protection–Water Regulation, Chs. NR 300—

Rules relating to general permits for dredging Great Lakes navigable waterways.

Rules relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

Environmental Protection–Air Pollution Control, Chs. NR 400—

Rules relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business.

Regulation and Licensing:

Rules relating to substance abuse professionals.

Workforce Development:

Workforce Solutions, Chs. DWD 11 to 59

Rules relating to child care enrollment underutilization.

Submittal of Rules to Legislative Council Clearinghouse.

Page 8

Commerce:

Rules affecting chs. Comm 5 and 18, relating to licensing of elevator contractors and installers.

Rule-Making Notices.

Pages 9 to 13

Agriculture, Trade and Consumer Protection:

Hearing to consider rules affecting ch. ATCP 21, relating to voluntary certification of firewood dealers.

Commerce:

Hearing to consider rules affecting chs. Comm 5 and 18, relating to licensing of elevator contractors and installers.

Natural Resources:

Hearing to consider rules affecting ch. NR 462, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business.

Submittal of Proposed Rules to the Legislature.

Page 14

Insurance:

CR 07-070 — Ch. Ins 2, relating to use of the 2001 CSO preferred class structure mortality table in determining reserve liabilities.

Natural Resources:

CR 07-026 — Chs. NR 1 and 45 – relating to use of department properties.

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.

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: See section 7 (2), 2005 Wis. Act 456
Hearing Date: June 27, 2007

Commerce

(Amusement Rides, Ch. Comm 34)

Rule adopted creating **s. Comm 34.22 (5m)**, relating to amusement ride safety.

Finding of Emergency

The Department of Commerce finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

1. An amusement ride fatality occurred in Wisconsin on July 14, 2007. The ride involved the field attachment of passengers who don harnesses and then are elevated off the ground.

2. Although no mechanical or equipment failure contributed to the incident, attachment and connection practices of the operators did not incorporate safety practices used on some similar rides in the industry.

3. The department recognizes that without promulgating this emergency rule, there could be confusion in what constitutes a recognized safe practice for the field attachment or connection of harnessed passengers on similar amusement rides. The department believes clarifying the code will promote safety.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and the Revisor of Statutes.

Publication Date: August 13, 2007
Effective Date: August 13, 2007
Expiration Date: January 10, 2008
Hearing Date: October 15, 2007

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

Dentistry Examining Board

Rule adopted amending the effective date of CR 04–095, by amending the emergency rule that took effect on December 29, 2006, relating to the requirements for administering the office facilities and equipment for safe and effective administration and the applicable standards of care, and to provide for reporting of adverse occurrences related to anesthesia administration.

Finding of Emergency

The board has made a finding of emergency. The board finds that failure to delay the effective date of CR04–095, from July 1, 2007 to November 1, 2007 will create a danger to the public health, safety and welfare. The extra four months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients. The rules created a course requirement for receiving a conscious sedation permit that did not exist. Courses have and are being developed to meet this requirement. By November 1, 2007, the course will have been available to enough dentists to ensure the continuation of the use of conscious sedation.

Publication Date: June 24, 2007
Effective Date: July 1, 2007
Expiration Date: November 28, 2007
Hearing Date: July 11, 2007

Elections Board

Rules adopted creating s. EIBd 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 (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
Hearing Date: June 12, 2007

Natural Resources (2) (Fish and Game, etc., Chs. NR 1—)

- Rules adopted amending s. NR 20.20, relating to the hook and line harvest of lake sturgeon.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary to prevent excessive harvest of lake sturgeon from the inland waters of Wisconsin during the 2007 hook and line season.

Publication Date: July 23, 2007
Effective Date: July 23, 2007
Expiration Date: December 20, 2007
Hearing Date: August 13, 2007

- Rules adopted amending ss. NR 10.01 (1) (v), 10.12 (5) (d) and 10.15 (6); and to repeal and recreate s. NR 10.01 (1) (b), (g) and (u), relating to the 2007 migratory game bird seasons and waterfowl hunting zones.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid-August of each year. This order is designed to bring the state hunting regulations to conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: August 30, 2007
Effective Date: August 30, 2007
Expiration Date: January 27, 2008
Hearing Date: October 19, 2007

Natural Resources (2) (Environmental Protection – Water Regulation, Chs. NR 300—)

- Rules adopted revising ch. NR 345, relating to general permits for dredging in Great Lakes navigable waterways.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits for dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove algae, mussels, dead fish and similar large plant and animal nuisance deposits. Without emergency rules to create general permits, all dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2007 summer season, with specific standards for operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits.

Publication Date: June 10, 2007
Effective Date: June 10, 2007
Expiration Date: November 7, 2007
Hearing Date: July 10, 2007

- Rules adopted revising chs. NR 320, 323, 328, 329, 341, 343 and 345, relating to general permit criteria requiring

decontamination of equipment for invasive species and viruses.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits standards that require decontamination of equipment for invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only with an automatic 30–day public notice. The required 30–day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision–making but not diminish the public trust in state waters, these emergency rules are required to establish general permits standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

In addition, 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.

Publication Date: July 12, 2007
Effective Date: July 12, 2007
Expiration Date: December 9, 2007
Hearing Date: August 13, 2007

Natural Resources (Environmental Protection – Air Pollution Control, Chs. NR 400–)

Rules adopted creating s. NR 462.015, relating to national emission standards for hazardous air pollutants for industrial,

commercial and institutional boilers and process heaters and potentially affecting small business.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Preservation of the public welfare necessitates putting the rule into effect prior to the time that it would take if the department complied with the normal procedures. Federal regulations that are the basis for ch. 462, Wis. Adm. Code, were vacated on July 30, 2007 by the U.S. Court of Appeals. Both the vacated federal regulations and ch. NR 462 contain a date for compliance of September 13, 2007. This order is designed to bring state rules into conformity with the court–ordered vacatur of the federal regulations. Normal rule–making procedures will not allow implementation of ch. NR 462 to be stayed before September 13, 2007.

Publication Date: September 13, 2007
Effective Date: September 13, 2007
Expiration Date: February 10, 2008
Hearing Date: October 26, 2007
 [See Notice this Register]

Regulation and Licensing

Rules adopted creating chs. RL 160, 161, 162, 163, 166, 167, and 168, relating to substance abuse professionals.

Exemption From Finding of Emergency

Section 9140 (1q) of 2005 Wisconsin Act 25 states in part: “Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection”.

2005 Wisconsin Act 25 created Subchapter VII of chapter 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists. This Act transferred the certification and regulation of Alcohol and Other Drug Abuse (AODA) counselors from the Department of Health and Family Services to the Department of Regulation and Licensing, effective 2006. This proposed rule–making order creates rules relating to definitions, requirements for certification, supervised practice, scope of practice, education approval, and professional liability insurance for substance abuse professionals. Please refer to the “Summary of factual data and analytical methodologies” section and the section on “Analysis and supporting documentation used to determine effect on small business or in preparation of economic impact report.”

Chapter RL 160 is being created to include definitions of terms that are used in subch. VII of ch. 440, Stats., and in chs. RL 160 to 167. The proposed rules include definitions for “accredited,” “assessment,” “behavioral science field,” “CEH,” “clinical substance abuse counselor,” “clinical supervision,” “clinical supervisor,” “clinical supervisor–in–training,” “comprehensive program,” “core functions,” “credential,” “department,” “DSM,” “hour,” “independent clinical supervisor,” “intermediate clinical supervisor,” “patient,” “practice dimensions,” “prevention,” “prevention domains,” “prevention specialist,” “prevention specialist–in–training,” “substance,” “substance abuse counselor,” “substance abuse counselor–in–training,” “substance use disorder” and “transdisciplinary foundations.”

Chapter RL 161 is being created to identify the requirements and procedures for submitting applications for licenses.

Chapter RL 162 is being created to identify the restrictions and minimum requirements for supervision of counselors by clinical supervisors.

Chapter 163 is being created to identify the scope and restrictions on the practice of the credential holders.

Chapter RL 166 is being created to identify the approval process and educational requirements for educational coursework and continuing education opportunities.

Chapter RL 167 is being created to require credential holders to have liability insurance in effect.

Chapter RL 168 is being created to identify the requirements for continuing education.

Publication Date: September 8, 2007
Effective Date: September 10, 2007
Expiration Date: February 7, 2008

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

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
Hearing Date: June 20, 2007
Extension Through: October 27, 2007

Submittal of Rules to Legislative Council Clearinghouse

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

Commerce

On September 27, 2007, the Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The rule affects chs. Comm 5 and 18, relating to the licensing of elevator contractors and installers.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for October 29, 2007.

Contact Person

Larry Swaziek
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lswaziek@commerce.state.wi.us

Rule–Making Notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 07–085]

(Reprinted from 9/30/07 Wis. Adm. Register)

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

DATCP will hold two public hearings at the times and places shown below. DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearings, the hearing record will remain open until November 2, 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>.

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by October 12, 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 facilities are handicap accessible.

Copy of Rule

You may obtain a free copy of this hearing draft 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 hearing draft 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 Information

October 16, 2007

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

DNR Service Center

4301 Rib Mountain Road

Wausau, WI 54401

October 18, 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 hearing draft 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.

Statutory authority

Sections 93.06 (1p), 93.07 (1), 93.07 (12) and 94.01, Stats.

Statutes interpreted

Sections 93.06 (1p), 93.07 (12) and 94.01, Stats.

Explanation of agency authority

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 or more than 50 miles from the state park unless the firewood originates from a firewood dealer who is certified by DATCP.

Rule content

This rule creates a DATCP program for certification of firewood dealers. Firewood dealers certified under this rule may 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. A certified firewood dealer may sell or distribute firewood acquired from an out of state source but must apply the treatment required to be certified at the dealer’s premises in Wisconsin. Certification does not authorize firewood imports from quarantined areas that are currently prohibited under ch. ATCP 21, Wis. Adm. Code.

Under this 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 a \$50 charge for certification. The authority for the department to charge the fee is in s. 93.06 (1m) and (1q), Stats. 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):

Firewood the applicant sells or distributes in this state intended to meet the requirements of NR 45.04 (1) (g) is treated at the premises of the firewood dealer in at least one of the following ways prior to sale or distribution:

- 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.

Comparison to federal regulations

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, Pennsylvania 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.

Comparison to adjacent states

Surrounding states where EAB has been identified (Illinois, Indiana, Ohio, Pennsylvania 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.

Fiscal Impact

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 state park rules prohibit firewood originating from outside the state or more than 50 miles from the state park, 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 for calendar year 2007. The \$50 annual certification fee will offset a portion of DATCP's expenses related to the operation of the firewood certification program. DATCP will absorb the remaining expenses.

Business Impact

This rule will not have a significant impact on firewood dealers. 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. Those dealers who choose to be certified will pay a \$50 fee for certification.

DNR state park rules prohibit firewood originating outside this state or 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.

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.

Notice of Hearing Commerce (Chs. Comm 5 and 18) [CR 07–089]

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (15) (j), 101.17, 101.19 (1) (k), and 101.981 to 101.986, Stats., the Department of Commerce will hold a public hearing on proposed rules under chapters Comm 5 and 18 relating to licensing of elevator contractors and installers.

Hearing Information

The public hearing will be held as follows:

| <u>Date and Time:</u> | <u>Location:</u> |
|---|--|
| October 29, 2007 – Monday 10:00 a.m. | Conference Room 3C, Thompson Commerce Center 201 West Washington Ave. Madison, WI |

Interested persons are invited to appear at the hearing and present comments on the proposed 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 this proposed rulemaking will remain open until November 12, 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 Larry Swaziek, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701–2689, or Email at lswaziek@commerce.state.wi.us.

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.

Analysis Prepared by Department of Commerce

Statutes interpreted

Sections 101.19 (1) (k), 101.981 to 101.986, Stats., as created by 2005 Wisconsin Act 456, and sections 101.02 (15) (j) and 101.17, Stats.

Statutory authority

Sections 101.19 (1) (k), 101.981 to 101.986, Stats., as created by 2005 Wisconsin Act 456, and sections 101.02 (15) (j) and 101.17, Stats.

Related statute or rule

Section 101.02 (1) and (15), Stats.

Explanation of agency authority

Under the authority of ss. 101.17 and 101.982, Stats. as affected by 2005 Wisconsin Act 456, the Department has the authority to promulgate rules for the inspection, installation and maintenance of elevators, escalators and lift devices. The Department also has the authority to develop licensing requirements for a number of new elevator categories created under the new law for inspection, installation and maintenance of elevators, escalators and lift devices.

Summary of proposed rules

The revisions to chapters Comm 5 and 18 are in response to 2005 Wisconsin Act 456 relating to the regulation of elevators, escalators and lift devices. The following is a summary of the major rule changes to these chapters:

- Repeal sections Comm 5.37, Comm 5.38, Comm 5.383, Comm 5.385 and Comm 5.387 as created by the emergency rule date June 1, 2007. The permanent licensing requirements are included in this rule package.
- Establish a definition for “conveyance”, which exempts residential conveyances, material lift and hoists. Other definitions including “lift”, “material hoist” and “personnel hoist” are included to be consistent with national, industry–wide safety standards. [Comm 5.003]
- Modify the tables relating to fees and terms of credentials to reflect the new elevator and lift categories established under the law. [Tables 5.02 and 5.06]
- Create licensing requirements for elevator contractors, elevator mechanics, elevator mechanics–restricted, elevator apprentices, elevator apprentices–restricted and elevator helpers as authorized under the law. [Comm 5, subchapter X]
- Change the current elevator inspector “certification” terminology to “licensure” to be consistent with the law. [Comm 5.64, and Comm 18]
- Reorganize Comm 18 subchapters II, III and IV to clarify owner and elevator contractor responsibilities (subchapter II), combine the plan review and inspection requirements, and modify the certification requirements for consistency with the law (subchapter III) and create requirements that address municipal enforcement of chapter Comm 18 (subchapter IV). [Comm 18, Subchapters II, III and IV]
- Rename the application form to “permit application” to reflect the change in the law. The requirements for submission of the application have not changed. [Comm 18.1007 and 18.1013]

Comparison with federal regulations

There are no existing or proposed federal regulations that address or impact the activities to be regulated by this rule.

Comparison with adjacent states

An Internet–based search of adjacent states’ rules found the following regulations:

- Michigan licenses elevator contractors and elevator journeypersons.
- Minnesota licenses elevator contractors.
- Illinois has enacted laws and rules similar to the provisions under 2005 Wisconsin Act 456 with regard to licensing.
- Iowa does not license elevator contractors or installers.

Summary of factual data and analytical methodologies

In developing the rules the Department reviewed the language of 2005 Wisconsin Act 456 in conjunction with

current legislative proposals that would affect provisions of the Act. The Department's review and assessment process involved the participation of the Conveyance Safety Code Council. The members of that Council represent many stakeholders involved in the conveyance industry, including manufacturers, inspectors, building contractors and the general public as users of the conveyances. (A listing of the Conveyance Safety Code Council is provided at the end of this analysis.)

Analysis and supporting documents used to determine effect on small business

The Department utilized the Conveyance Safety Code Council to gather information on potential impacts in complying with both the technical and administrative requirements of the codes. The proposed license fees reflect the cost of administering licenses and are similar to license fees for other trades such as electricians and plumbers. The proposed licensing process is also similar to the licensing procedures for other various trades currently addressed under chapter Comm 5.

Affect on small business

The Department believes the rules will not increase the effect on small businesses over that imposed by Wisconsin Act 456. An economic impact report has not been required pursuant to s. 227.137, Stats.

Council Members and Representation

Conveyance Safety Code Council

| | |
|----------------|--|
| Kevin Kraemer | Building Contractors |
| Jesse Kaysen | Public Member |
| Kelvin Nord | Labor |
| Paul Rosenberg | Architectural Design or Elevator Consulting Profession |
| Andrew Zielke | Elevator Manufacturers |
| Larry Swaziek | Secretary of Commerce Designee |
| Dan Meneguini | Employee of Commerce/Inspection |

Copy of Rules

The proposed rules and an analysis of the proposed 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.

Environmental Analysis

NOTICE IS HEREBY GIVEN that the Department has considered the environmental impact of the proposed rules. In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

Types of small businesses that will be affected by the rules.

The proposed rules implement mandates imposed by 2005 Wisconsin Act 456. The department estimates that there are

approximately 40 elevator contractors, 500 elevator mechanics and 500 apprentices/helpers that would be impacted by the legislation. The department believes the rules will not increase the effect on small business over that imposed by the Act.

Reporting, bookkeeping and other procedures required for compliance with the rules.

The rules do not create any new reporting or bookkeeping procedures.

Types of professional skills necessary for compliance with the rules.

The law mandates that no person may engage in the business of installing or servicing conveyances, such as elevators, escalators and platform lifts unless they are licensed by the department. To obtain a license an applicant must demonstrate knowledge and skill related the installation or servicing of conveyances through experience, training or examination.

Will the rules have a significant economic impact on small businesses?

No.

Small business regulatory coordinator

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.

Fiscal Estimate

The department estimates that there are approximately 40 elevator contractors, 500 elevator mechanics and 500 apprentices/helpers that would be impacted by the legislation. The Department estimates the revenues generated by charging the licensing fees for elevator contractors and installers will be approximately \$28,500 annually.

The increase in workload due to the new licensing requirements will be performed with existing staff.

Notice of Hearing

Natural Resources

(Environmental Protection–Air Pollution Control, Chs. NR 400—)

[CR 07–088]

NOTICE IS HEREBY GIVEN that pursuant to ss. 285.11 (1) and (2) (a) and 285.27 (4), Stats., interpreting s. 285.27 (2) and (4), Stats., the Department of Natural Resources will hold a public hearing on the creation of s. NR 462.015, Wis. Adm. Code, relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business. The proposed rule stays implementation of ch. NR 462.

The federal National Emission Standard for Hazardous Air Pollutants for industrial, commercial and institutional boilers and process heaters (Boiler MACT) was promulgated by the U.S. Environmental Protection Agency on September 13, 2004 with a compliance date set for September 13, 2007. On July 30, 2007, the D.C. Circuit Court of Appeals issued a mandate vacating the Boiler MACT. The compliance date for existing sources under the now vacated federal rule is no longer valid at the federal level. However, since the Department promulgated a similar standard in ch. NR 462 as required by s. 285.27 (2) (a), Stats., the Boiler MACT requirements remain in Wisconsin's rules.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to ss. 227.24, 285.11 (1) and (2) (a) and 285.27 (4), Stats., interpreting s. 285.27(2) and (4), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. AM-38-07(E) relating to national emission standards for hazardous air pollutants for industrial, commercial and institutional boilers and process heaters and potentially affecting small business. This emergency order took effect on September 13, 2007. This order stayed the implementation of ch. NR 462.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

October 26, 2007 Room G09
 Friday GEF #2 Office Building
 at 1:30 p.m. 101 South Webster Street
 Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266-2856 or by e-mail at Robert.Eckdale@wisconsin.gov with specific information on your request at least 10 days before the date of the scheduled hearing.

Submission of Written Comments

Written comments on the emergency rule and the proposed rule may be submitted via U.S. mail to Mr. Roger Fritz, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to Roger.Fritz@wisconsin.gov. Comments may be submitted until November 2, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing.

Copy of Rule

The emergency rule, proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. AM-37-07.) If you do not have Internet access, a personal copy of the emergency rule, proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-2856.

Initial Regulatory Flexibility Analysis

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

Types of small businesses affected

Any small business which is a major source of hazardous air pollutants and has a solid fuel fired boiler or process heater.

Description of reporting and bookkeeping procedures required

Not applicable to the proposed stay in the implementation of the rule.

Description of professional skills required

An environmental scientist or environmental engineer with knowledge of organic hazardous air pollutant emissions, halogenated solvent cleaning operations, performance testing, air pollution control technologies, compliance strategies and environmental regulations would have the professional skills necessary to ensure compliance with ch. NR 462.

Environmental Analysis

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Fiscal Estimate

This proposal requires no action by local units of government, and the Department assumes there will be no fiscal impact on local government.

The Department also assumes that staying the implementation of Ch. NR 462 will have no state fiscal effect. However, section 112(j) of the federal Clean Air Act (42 U.S.C. 7412(j)(2)) may apply to the Boiler Maximum Achievable Control Technology (MACT) vacatur. Section 112(j)(2) requires permitting authorities to issue case-by-case MACT determinations when the US EPA has failed to promulgate a MACT for an identified source category such as boilers. However, there is no available guidance from US EPA on the implementation of s. 112(j) for sources previously affected by the federal boiler MACT, and as a result it is currently unclear whether the Department will perform these reviews. If the Department were required to perform the case-by-case reviews, it might do so for up to 59 facilities. The Department assumes that each s. 112(j) determination would take approximately 40 hours for the permit review. If the Department were in fact required to perform the case-by-case review, the additional workload would be absorbed in the agency's budget by redirecting existing staff.

Staying implementation of ch. NR 462 would have no direct adverse fiscal impact on the private sector. Without ch. NR 462 as the DNR determination under s. 112(j), affected facilities would need to prepare and submit a permit application. Because s. 112(j) is an existing federal requirement, the Department's proposed action does not impose additional costs on the private sector.

Submittal of Proposed Rules to the Legislature

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

Insurance

(CR 07-070)

Ch. Ins 2, relating to use of the 2001 CSO preferred class structure mortality table in determining reserve liabilities.

Natural Resources

(CR 07-026)

Chs. NR 1 and 45, relating to the use of department properties.

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