

STATEMENT OF SCOPE

Department of Revenue

Rule No.: Chapters Tax 7 & 8

Relating to: Alcohol beverage regulation pursuant to 2023 Wisconsin Act 73

Rule Type: Emergency and Permanent

1. Finding/nature of emergency (Emergency Rule only):

2023 Wisconsin Act 73 is a complex and detailed change to alcohol beverage regulations not seen since 2011. The Act touches all tiers of the alcohol beverage industry. Many provisions impact both existing and new businesses. Most provisions come into effect between 4 months from publication to 24 months from publication. Due to the legislative review schedule, impact to existing businesses, and short time horizon for implementation of some items, emergency rulemaking is necessary to preserve public peace, health, safety, and welfare and to ensure tax compliance and regulatory fairness in the marketplace.

2. Detailed description of the objective of the proposed rule:

The proposed rule will address sections of administrative code affected by 2023 Wisconsin Act 73, as well as creating relevant deadlines, standards, and processes for compliance. Further, the proposed rule will review and amend existing Administrative Code Chapters Tax 7 and 8 to bring the regulatory framework into compliance with the new law.

3. Description of existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing policies related to the regulation and tax obligations of the alcohol beverage industry include Administrative Code Chapters Tax 7 and 8 and Wisconsin Statute Chapters 125 and 139. New policies created by 2023 Wisconsin Act 73 that may require rulemaking include, but are not limited to:

- Creation of a Division of Alcohol Beverage within the department that is responsible for regulation of the industry.
- Legalization of certain agreements between producers (contract producing, alternating proprietorships, licensing arrangements).
- Change of permissible and impermissible interest restrictions among different industry tiers.
- Creation of four new permits and two new reporting requirements:
 - Operator's permit
 - No-sale event venue permit
 - Fulfillment house permit and monthly reporting form
 - Common carrier permit and monthly reporting form
 - Creation of small intoxicating liquor cooperative wholesaler authorization and a specific period for application.
 - Alteration and expansion of retail sales authorizations for producers.
 - Change of cost of alcohol beverage permits issued by the new Alcohol Beverage Division.
 - Creation of jurisdiction over out-of-state permittees.
 - Allows certain retailers to create and sell premixed cocktails.

Further, adjustments to Wisconsin Administrative Code Chapters 7 and 8 may be required. Under the Act, two different divisions will be responsible for regulation of industry and tax compliance. The Division of Alcohol Beverages will oversee regulation of industry and the Division of Income, Sales, and Excise

Taxes will continue to oversee tax compliance. Changes to these chapters will be made to reflect this separation of responsibility.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 227.11(2), Stats., provides statutory rule-making authority as follows:

- (a) "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute..."
- (b) "Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules ..."

Section 125.03 (1) (a), Stats., provides statutory rule-making authority as follows:

- (a) The department, in furtherance of effective control, may promulgate rules consistent with this chapter and ch. 139.

2023 Wisconsin Act 73 amends Section 125.03 (1) (a), Stats., amends the statutory rulemaking authority, above, effective March 1, 2024, as follows:

- (a) The division may promulgate rules consistent with this chapter and ch. 139 to carry out the division's duties under this chapter.

Section 139.08(2), Stats, provides statutory rule-making authority as follows:

- (2) RULES. The secretary of revenue shall adopt rules necessary to carry out the secretary's duties under this chapter.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates it will take approximately 200 hours to develop the rule.

6. List with description of all entities that may be affected by the proposed rule:

New and existing alcohol beverage producers, distributors, retailers, no-sale event venues, fulfillment houses, common carriers, operators/bartenders, and municipal governing bodies including law enforcement and clerks may be affected by the proposed rule.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal regulations and administrative provisions allow alternating proprietorships and contract manufacturing of fermented malt beverages and intoxicating liquor.

For alternating proprietorships, the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) requires all entities sharing a premises to be properly permitted. The host and tenant producers each hold title to their own ingredients and pay tax on their own products when removed from the bonded area.

For contract production purposes, only the production brewer of the alcohol beverages is required to hold a permit and the production brewer holds title to the ingredients and pays the tax on the product produced under the agreement. In contrast, sec. [Tax 7.23](#), Wis. Adm. Code, requires both the production and recipe brewers to hold state issued permits. The recipe brewer is also responsible for reporting and paying tax on the beer produced under the agreement.

The department will consider industry best practice and federal regulations in promulgation of this rule.

(see federal TTB Industry Circulars [2005-2](#), [2008-4](#), [2018-3](#) for more information)

There are no federal regulations concerning other potential rulemaking topics the department is aware of at this time.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There will be some costs incurred by the industry associated with acquiring permits, submitting required documents, and general compliance with the administrative code. However, these costs were created by the adoption of 2023 Wisconsin Act 73.

This scope statement was approved by the Governor on January 18, 2024.

Contact Person:

Ann DeGarmo

Excise Tax Specialist

Office of Technical Services

608.266.7179

ann.degarmo@wisconsin.gov