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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.

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

Agriculture, Trade and Consumer Protection

EmR0913 — Rule adopted revising **s. ATCP 21.17**, relating to the quarantines of Brown County and Kenosha County for emerald ash borer.

Finding of Emergency

On July 24, 2009, APHIS identified emerald ash borer in Brown County. On August 12, 2009, APHIS identified emerald ash borer in Kenosha County. Emerald ash borer is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Brown County and Kenosha County but that it will take up to six weeks for APHIS to act. A six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

Publication Date: August 22, 2009
Effective: August 22, 2009 through January 18, 2010
Hearing Dates: September 29 and 30, 2009
 (See the Notice in this Register)

Children and Families

Family and Economic Security, Chs. DCF 101–153

EmR0906 — Rule adopted revising **ss. DCF 120.05, 120.07 and 120.08**, relating to emergency assistance for needy families.

Finding of Emergency

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

The recent large increase in foreclosures has caused tenants living in rental properties that are in foreclosure to lose their housing. Under the current rule, these tenants are not eligible for Emergency Assistance due to impending homelessness and would only be able to receive assistance if they became homeless. This emergency rule will allow these tenants to receive assistance for impending homelessness and avoid the additional expense and trauma of homelessness.

The current maximum payment amounts for Emergency Assistance due to homelessness and impending homelessness are insufficient to allow a smaller family to obtain or retain a permanent living accommodation. Increasing the payments for smaller households immediately will help them obtain or retain a permanent living accommodation with fewer resources from other sources and may prevent homelessness for these families.

The current rule has no maximum payment amount for Emergency Assistance due to an energy crisis. All other categories of assistance have a maximum payment based on group size. This emergency rule requires that families first exhaust resources available through the Wisconsin Home Energy Program and sets a maximum payment amount for assistance available for Emergency Assistance due to energy crisis to make better use of the program's limited funds.

Publication Date: April 9, 2009
Effective: April 22, 2009 through September 18, 2009
Hearing Date: June 11, 2009

Children and Families

Family and Economic Security, Chs. DCF 101–153 Early Care and Education, Chs. DCF 201–252

EmR0908 — Rules adopted amending **s. DCF 101.09 (3) (b) and creating ss. DCF 101.09 (3) (b) 1. b., 101.26 (3), and 201.08 (2) (g)**, relating to Wisconsin Works and Wisconsin Shares disregard of temporary census income.

Finding of Emergency

The Department of Children and Families finds that an emergency exists and that the rule is necessary for the

immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Disregarding income earned from temporary employment with the U.S. Census Bureau in determining Wisconsin Works and Wisconsin Shares eligibility and child care copayments is necessary for the public welfare to ensure Wisconsin has a broad pool of available workers to help ensure an accurate Census count, particularly in historically undercounted low-income neighborhoods. Census work is currently ongoing.

Publication Date: May 28, 2009
Effective: June 1, 2009 through October 28, 2009
Hearing Date: July 14, 2009

Commerce

Licenses, Certifications and Registrations, Ch. Comm 5 Wis. Commercial Building Code, Chs. Comm 60–66

EmR0904 — Rule adopted creating **ss. Comm 5.30 and 61.295**, relating to building contractor registration.

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. Under Chapter 560 of the Statutes, the department of commerce is charged with facilitating the establishment and retention of business enterprises in Wisconsin, and with seeking closer cooperation and coordination between units of state government, so that the economy of the state may continue to develop fully and meet citizen and community needs.

2. Under Chapters 101 and 145 of the statutes, the department of commerce has oversight over the design, construction, alteration and maintenance of public buildings and places of employment, one- and two- family dwellings, public swimming pools and public water attractions in order to protect public safety, health and welfare and the waters of the state.

3. The department has proposed an administrative rule that would require the registration of various types of building contractors not already credentialed by the department under existing administrative rules. Under the proposed rules contractors must be registered with the department by January 1, 2010. A public hearing on that proposal was held on January 21, 2009.

4. The proposed rule has three main benefits to Wisconsin: first, it will enhance the department's ability to communicate with and educate building contractors throughout the state about their obligations to limit safety and health risks for the citizens of Wisconsin; second, it will enhance the ability of the department to cooperate and coordinate with the Department of Workforce Development relative to their administration of unemployment insurance and workers compensation insurance programs; and third, it will enhance the ability of the department to cooperate and coordinate with the Department of Revenue relative to their administration of the state income tax program.

5. Due to the current economic circumstances, the department has determined that the implementation for building contractor registration should be July 1, 2009 in

order for the benefits to be in effect for the 2009 building construction season.

Publication Date: March 2, 2009
Effective: March 2, 2009 through July 29, 2009
Extension Through: September 27, 2009
(except ss. Comm 5.30 (1) and 61.295 (2))
Effective: July 1, 2009 through November 27, 2009
Hearing Date: March 31, 2009

Commerce

Financial Resources for Businesses and Communities, Chs. Comm 104—

EmR0910 — Rule adopted to create **Chapter Comm 100**, relating to tax benefits for job creation, capital investment, employee training, and corporate headquarters.

Exemption From Finding of Emergency

The Legislature, by section 9110 (4) in 2009 Wisconsin Act 2, exempts the Department from providing evidence that this emergency rule is necessary for the preservation of the public peace, health, safety or welfare; and exempts the Department from providing a finding of emergency for the adoption of this rule.

Publication Date: June 30, 2009
Effective: June 30, 2009 through July 1, 2010 or the date permanent rules take effect, whichever is sooner
Hearing Date: September 15, 2009

Financial Institutions — Banking

EmR0907 — Rule adopted to create **Chapter DFI–Bkg 47 and to repeal Chapter DFI–Bkg 41**, relating to the transition from a registration system to a license system.

Exemption From Finding of Emergency

The legislature by section 9117 of 2009 Wisconsin Act 2 provides an exemption from a finding of emergency for the adoption of the rule.

Publication Date: May 4, 2009
Effective: Section 1: 5–4–09 through 7–1–11
Section 2: 9–1–09 through 7–1–11
Section 3: 1–10–10 through 7–1–11
Hearing Date: June 10, 2009

Natural Resources

Fish, Game, etc., Chs. NR 1—

EmR0914 — Rule adopted to revise **Chapter NR 10**, relating to hunting and the 2009 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 22, 2009
Effective: September 1, 2009 through January 28, 2010

Natural Resources

Environmental Protection — Water Regulation, Chs. NR 300—

EmR0915 — A rule adopted revising **Chapters NR 335 and 336**, relating to grants for dam maintenance, repair, modification, or abandonment and removal.

Finding of Emergency

The substantial increase in bonding for the dam grant programs is a strong message from the legislature that concern for public welfare from unsafe dams is growing, as well as the desire to help dam owners, including the owners of the many dams damaged during the flooding in 2007 and 2008. In order to protect the public and provide this financial assistance, these additional funds should be put to work as soon as possible. The timeline for permanent rule promulgation will impede the Department's ability to accept applications and commit funding to dam safety projects until at least June 2010, which would delay most projects until late 2010 or 2011. The emergency rules will allow immediate implementation of modifications that will allow a grant application cycle to be conducted yet this fall and allow most projects to be constructed during the 2010 construction season or before.

Publication Date: August 28, 2009
Effective: August 28, 2009 through January 24, 2010

Pharmacy Examining Board

EmR0903 — A rule adopted repealing **s. Phar 4.02 (2)**, relating to the practical examination.

Finding of Emergency

The Pharmacy Examining Board finds that, under **s. 227.24 (1), Stats.**, the repeal of **s. Phar 4.02 (2)** is required for the preservation of the public peace, health, safety and welfare.

Currently, under **s. Phar 4.02 (2)**, the board administers a practical examination to determine an applicant's competence in compounding and dispensing medications, which includes consultation of patients. The board has determined that this examination is no longer needed because the competencies tested in the examination are also tested in two other national examinations that applicants are required to take in order to obtain a license in Wisconsin. The board has also determined that the practical examination requirement may contribute to the shortage of pharmacists in Wisconsin.

First, under **s. Phar 4.02 (1) and (3)**, an applicant is required to take and pass the Multi–State Pharmacy Jurisprudence Examination (MPJE) and the North American Pharmacist Licensure Examination (NAPLEX). Both of these examinations test competencies that relate to subject areas that are also tested in the practical examination. As a result, applicants are required to take an additional examination, and pay an additional examination fee. In some instances, this step may also result in a delay in the processing of applications for licensure.

Second, in reference to the shortage of pharmacists in Wisconsin, the board has found that populations in rural areas and in certain city neighborhoods are underserved. The board believes that, because of its practical examination requirement, potential applicants from other states are declining to seek licensure in Wisconsin. Wisconsin is one of only four states that require a practical examination. None of the states that border Wisconsin have a practical examination requirement.

Publication Date: February 28, 2009
Effective: February 28, 2009 through July 27, 2009
Hearing Date: April 8, 2009
Extension Through: September 25, 2009

Public Instruction

EmR0916 — A rule adopted revising **ss. PI 35.03 and 35.05**, relating to establishing a fee under the Milwaukee Parental Choice Program.

Exemption From Finding of Emergency

Pursuant to Section 9139 (3) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

Publication Date: September 1, 2009
Effective: September 1, 2009 through January 28, 2010

(Except Section 1)

Effective: October 1, 2009 through February 27, 2010

Regulation and Licensing (2)

- EmR0827** — Rule adopted **creating s. RL 91.01 (3) (k)**, relating to training and proficiency in the use of automated external defibrillators for certification as a massage therapist or bodyworker.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule 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 to implement 2007 Wisconsin Act 104. Notwithstanding **s. 227.24 (1) (c) and (2)** of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective: September 10, 2008
 through the date on which
 the final rules take effect
Hearing Dates: November 26, 2008
 April 13, 2009

2. **EmR0828** — Rules adopted to amend s. RL 181.01 (2) (c); and to create ss. RL 180.02 (1m), (3m) and (11), 181.01 (1) (d), (2) (c) 1. and 2., relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

Exemption From Finding of Emergency

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule 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 to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

Publication Date: September 10, 2008
Effective: September 10, 2008
 through the date on which
 the final rules take effect
Hearing Date: November 26, 2008

Revenue

EmR0912 — Rule adopted revising Chapter Tax 2, relating to combined reporting for corporation franchise and income tax purposes.

Finding of Emergency

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

The function of the Wisconsin Department of Revenue is to administer the Wisconsin tax laws. These laws, and tax policy for raising revenue, are determined by the State Legislature. The State Legislature recently enacted numerous items of tax legislation, affecting individuals and businesses alike. Some of these apply retroactively to January 1, 2009. Emergency rules are needed, not only to address the risk of revenue loss, but to add more clarity and certainty about the scope and application of the newly enacted statutes.

Publication Date: August 8, 2009
Effective: August 8, 2009 through
 January 4, 2010
Hearing Dates: September 25, 2009 and
 October 16, 2009

Transportation

EmR0909 — Rule adopted amending section Trans 315.03 (1) (a) and (c), relating to safety belt medical use exemption.

Finding of Emergency

The Department of Transportation finds that an emergency exists and that the attached rule is necessary for the immediate preservation of public health and safety. Current federal law at 23 USC 406 provides safety belt performance grants to a state that has in effect and is enforcing a conforming primary safety belt use law for all passenger motor vehicles. A grant of federal funds estimated at roughly \$15,000,000 are available if this state is eligible on or before September 30, 2009; a secondary grant based on “share of unallocated funds,” estimated at not more than \$1,000,000, may be available if this state is eligible on or before June 30, 2009. The Wisconsin Legislature is currently deliberating a primary safety belt use law as part of the executive biennial budget bill, 2009 Assembly Bill 75, with the aim of qualifying for safety belt performance grants. Were the law timely enacted, this state could remain ineligible for safety belt performance grants because Department rules allow persons other than physicians to grant medical exemptions from safety belt use requirements. Immediate action is necessary to avoid forfeiting approximately \$16,000,000 in federal funds for highway safety activities. Increased use of safety belts has been shown to reduce the severity of injuries sustained in motor vehicle collisions, and limiting the medical use exemption to physicians would increase use of safety belts.

Publication Date: June 25, 2009
Effective: June 25, 2009 through
 November 21, 2009
Hearing Date: September 8, 2009

Veterans Affairs

EmR0911 — Rule adopted to revise section VA 2.01, relating to the assistance to needy veterans grant program.

Finding of Emergency

The Wisconsin Department of Veterans Affairs finds that an emergency exists and that 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 economic recession in effect for the last fiscal year has adversely affected the veteran population. Many veterans have lost their employment or had their scope of employment reduced. In addition to losing employment, many veterans have seen their health care reduced or eliminated. In order to serve the largest population of veterans and ensure minimal health care for that population, the department is requesting emergency rules to define “vision care and to limit the eligibility, by available funding, for “dental care”, “hearing care”, and “vision care”. These eligibility limitations, which address the cost, type and frequency of care available under the program, will allow more veterans in need to access the limited resources of this program.

Publication Date: July 1, 2009
Effective: July 1, 2009 through
 November 27, 2009
Hearing Date: August 14, 2009

Scope Statements

Health Services

*Health, Chs. DHS 110—
Economic Support, Chs. DHS 250—*

Subject

Repeals Chapter DHS 117, relating to fees for copies of health care provider records; Chapter DHS 160, relating to the registration of sanitarians; and Chapter DHS 253, relating to child support cooperation for food stamps; and revises Chapter DHS 172, relating to the safety, maintenance and operation of public pools and water attractions.

Objective of the Rule

To repeal chs. DHS 117, 160, and 253, and to modify ch. DHS 172 to make corrections.

Policy Analysis

The legislature, under 2009 Act 28, established a fee schedule for medical record copies under ch. 146, Stats., which replaces the medical record copy fee schedule established by the department under ch. DHS 117. The department will promulgate an order to repeal the entire ch. DHS 117.

The legislature, under 2005 Act 25, transferred authority to regulate sanitarians to the department of regulation and licensing (DRL). DRL subsequently promulgated chs. RL 174–177 to regulate sanitarians. The department’s rules for sanitarians are under ch. DHS 160. The department will promulgate an order to repeal the entire ch. DHS 160.

The legislature, under 2007 Act 20, repealed s. 49.79 (2) (a), Stats., the child support cooperation requirement for food stamp eligibility. The department’s rules for implementing these requirements are under ch. DHS 253. The department will promulgate an order to repeal the entire ch. DHS 253.

The department of commerce repealed and recreated ch. Comm 90 (Clearinghouse Rule 08–056) which resulted in the renumbering of various sections that chapter. Chapter DHS 172 includes cross–references to a number of sections under ch. Comm 90. The department will promulgate an order to update cross–references in ch. DHS 172 and to clean up any non–substantive grammar or other errors.

Statutory Authority

Chapter 227.11 (2) (a), Stats.

Comparison with Federal Regulations

Not applicable. The changes considered under this Statement of Scope are to conform to state law or administrative code.

Entities Affected by the Rule

Medical records providers and requestors, public pool and water attraction owners and operators, the department of workforce development, department of regulation and licensing, sanitarians, and county agencies. It should be noted that the department is repealing chs. 117, 160, and 253 to conform to current state law. These repeals should have no

effect on entities. The department’s intended modifications to ch. DHS 172 should not have an effect on entities.

Estimate of Time Needed to Develop the Rule

Staff time to develop the proposed rules is approximately 20 hours. No other resources will be used.

Contact Information

Rosie Greer
Office of Legal Counsel
Phone: (608) 266–1279

Hearings and Appeals

Subject

Revises Chapter HA 2, relating to practice and procedure before the Division of Hearings and Appeals in corrections administrative hearings relating to revocation of community supervision.

Objective of the Rule

1. Change the definition of the term “client” to “offender” to conform to current practice in corrections administrative hearings before DHA.
2. Allow for issuance and receipt of documents by electronic mail.
3. Allow for subpoenas to be issued by agents employed by the Department of Corrections.
4. Specify the evidence to be considered at the hearing;
5. Specify the rights of an offender at the hearing;
6. Specify the identity information of a witness that may be withheld from the offender under certain conditions;
7. Allow for hearings to be conducted by telephone or video conference;
8. Delete outdated statutory references;
9. Allow for appeals to be dismissed if the opposing party does not receive a timely copy of the appeal;
10. Delete outdated amount charged for transcripts

Statutory Authority

Section 227.11 (2), Stats.

Comparison with Federal Regulations

There is a no federal law on the specific issues addressed in the proposed rules.

Entities Affected by the Rule

The entities affected by the proposed rules are the Department of Corrections, persons on community supervision in the state of Wisconsin who are subject to revocation of their supervision, public defenders and the public.

Estimate of Time Needed to Develop the Rule

400 hours

Contact Information

Diane Norman, Assistant Administrator
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Justice Assistance

Subject

Creates a new chapter relating to traffic stop information collection and analysis.

Objective of the Rule

Implement 2009 Wisconsin Act 28 directive to collect “all information relating to the traffic stop that is required to be collected under rules” promulgated by Office of Justice Assistance (OJA). Generally, the information to be collected is related to the race of individuals in a vehicle stopped by a law enforcement officer in the state of Wisconsin.

Policy Analysis

The Governor and Legislature have mandated an examination of the issue of whether racial minorities are disproportionately stopped by law enforcement officers in the course of driving on the state’s streets and roads. The issue has arisen in several different contexts including community concerns and national reports about Wisconsin’s overrepresentation of minorities in the criminal justice system and federal priorities for federal highway funds that include prohibiting racial profiling in traffic enforcement.

In the past decade, two gubernatorial bodies were appointed to examine issues described as “racial profiling” and “racial disparities” in Wisconsin’s criminal justice system. Both groups reviewed existing research, received citizen and law enforcement testimony and recommended collecting data on traffic stops as one means of determining the extent to which people of different races receive different treatment. Over this period, there also have been several bills introduced to mandate that data be collected and analyzed with regard to the race of individuals involved in traffic stops. No legislation was enacted until the 2009–11 budget.

Public policy issues include the impact of perceived disparate treatment of minorities on citizens’ quality of life, the fundamental fairness in the administration of justice and the potential workload impact of additional data collection on limited law enforcement resources. 2009 Wisconsin Act 28 directs that administrative rules are to cover the type of data to collect, the circumstances under which the data is collected, the format in which law enforcement must submit the data and the types of analyses OJA will conduct of the data.

Statutory Authority

Sections 16.964 (16) and 349.027, Wis. Stats., as well as non–statutory language in 2009 Wis. Act 28, Section 9101 (11y) and (12x).

Comparison with Federal Regulations

There is no known federal law requiring the collection and analysis of data about the racial characteristics of individuals involved in traffic stops. However, the federal government has provided incentive funds to encourage states to enact laws prohibiting racial profiling in the enforcement of traffic laws on what are termed “Federal–aid” highways. In short, the federal government will make money available to states who either enact or take steps toward enacting legislation to prohibit racial profiling in traffic stops and collect and analyze data related to traffic stops.

The federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)23 USC s.1906(2005) sets national priorities for public safety on nationally funded highways. In Wisconsin, those are interstate and numbered state highways.

Section 1906 of SAFETEA–LU provides incentive funding to encourage states to enact and enforce a law that prohibits the use of racial profiling in highway law enforcement and to maintain and allow public inspection of statistical information for each motor vehicle stop in the state regarding the race and ethnicity of the driver and any passengers. The Wisconsin Department of Transportation, Bureau of Transportation Safety (BOTS) received FFY2008 1906 Racial Profiling Incentive Grant funds from the National Highway Safety Administration and has applied for FFY2009 funds. Funds are to be used for collecting and maintaining data on traffic stops; evaluation of the data; and developing and implementing programs, including training, to reduce the occurrence of racial profiling.

Entities Affected by the Rule

2009 Wisconsin Act 28 requires all law enforcement agencies that make traffic stops to collect and submit data. Community organizations, advocacy groups and individual citizens are interested in racial justice issues.

Estimate of Time Needed to Develop the Rule

At a minimum, we estimate approximately 1000 hours of agency and DOA staff time will be needed to promulgate the rules.

Contact Information

Dennis Schuh, Program Director
Office of Justice Assistance
1 S. Pinckney Street, Suite 615
Madison, WI 53703
Phone: (608) 266–7682
Email: Dennis.Schuh@wisconsin.gov

Natural Resources

Fish, Game, etc., Chs. NR 1–

Subject

Revises Chapter NR 25, relating to commercial fishing for whitefish on Lake Michigan.

Objective of the Rule

Commercial fishing harvest limits for whitefish on Lake Michigan are specified in Chapter NR 25, Wis. Adm. Code. They are modified from time to time as the whitefish population fluctuates. The annual total allowable commercial harvest of whitefish from Lake Michigan is 2,470,000 pounds, and was last changed in 1999. The total allowable harvest is split among three commercial fishing zones following percentage–based allocations that have been in effect since our current system of individual transferable quotas was first applied to whitefish in 1989. The established formula for allocating the total allowable harvest among the three zones has been questioned by some commercial fishers and supported by others.

The Lake Michigan Commercial Fishing Board is charged by statute with advising the Department regarding harvest limits, harvest allocations, and other matters. On January of 2009 the LMCFB recommended increasing the annual total allowable commercial harvest by 200,000 pounds, with that amount to be split between Zones 1 and 3.

Noting that our biologists were reviewing the total allowable commercial harvest of whitefish and that the proposed assignment of any harvest increase to Zones 1 and 3 would be controversial among commercial fishers, we recommended delaying any action on the LMCFB recommendation.

Policy Analysis

We are now proposing to initiate a rule that would either increase or reduce the total allowable commercial harvest limit for whitefish from Lake Michigan, depending on the outcome of our biological review, and that would allocate the increase or reduction among commercial fishing zones. If an increase is proposed, we may or may not propose allocating the increase as recommended by the Lake Michigan Commercial Fishing Board. This aspect of the rule will be controversial. We are starting the rule making process prior to development of a specific recommendation to assure that the process will be completed and the rule will take effect before the start of the 2010–2011 commercial fishing license year.

Statutory Authority

Sections 29.014, 29.041 (1), 29.519 (1m) (c) and 227.11 (2) (a), Wis. Stats.

Comparison with Federal Regulations

Not applicable.

Entities Affected by the Rule

The interests of many Lake Michigan commercial fishers will be affected.

Estimate of Time Needed to Develop the Rule

One month FTE (combined effort by the Great Lakes Fisheries Specialist, a staff attorney, field biologists, and wardens).

Contact Information

William Horns
Bureau of Fisheries Management and Habitat Protection
Phone: (608) 266–8782
Email: William.Horns@Wisconsin.gov

Workforce Development***Unemployment Insurance, Chs. DWD 100–150*****Subject**

Revises Chapter DWD 135, relating to waiver of recovery of TRA and other TAA overpayments.

Policy Analysis

Chapter DWD 135 implements the statutory directive of Wis. Stat. §106.19 that requires the department to establish a policy for waiving recovery of overpayments of benefits

made under the trade adjustment assistance for workers program under 19 USC 2271 to 2319. The rule incorporates the federal standards and specifies the conditions under which the department may grant the overpayment waivers.

The federal requirements for determining waivers of recovery of these overpayments were changed in the amendments to the Trade Act made by the Trade and Globalization Adjustment Assistance Act of 2009 (Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, Public Law 111–5). The rule needs to be amended to take into account the changes to federal law and incorporate the new standards that must be used to determine when waivers may be granted.

Statutory Authority

Sections 106.19, 108.14 (2), and 227.11, Stats.

Comparison with Federal Regulations

Section 1855 of the 2009 Amendments to the Trade Act amends Section 243(a)(1) of the 2002 Trade Act to make waivers mandatory when the payment was made without fault on the part of the claimant and when requiring repayment would cause a financial hardship for the individual or individual's household when taking into consideration the income and resources reasonably available to the individual or household and other ordinary living expenses. This applies to waiver requests for workers covered by certifications for trade adjustment assistance filed on or after May 18, 2009. This supersedes and is more generous than the criteria for waivers in 20 CFR §617.55. See Training and Employment Guidance Letter No. 22–08 dated May 15, 2009, pp. A–29–30. The rule, DWD 135.02(3), requires the department to follow the old federal rule provisions for all waiver requests and must be changed to comply with the amendments to federal law for new waiver requests.

Entities Affected by the Rule

Claimants who receive benefits under the trade adjustment assistance for workers program under 19 USC 2271 to 2319.

Estimate of Time Needed to Develop the Rule

60 hours

Contact Information

Tracey Schwalbe, Research Attorney
Unemployment Insurance Division
tracey.schwalbe@wisconsin.gov
Phone: (608) 266–9641

Submittal of Rules to Legislative Council Clearinghouse

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

Administration CR 09–069

On August 28, 2009, the Department of Administration submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed order creates Chapter Adm 13, relating to the use of electronic signatures by governmental units.

Section 137.25 (2), Wis. Stats., requires the Department to adopt by rule, standards regarding the receipt of electronic signatures that promote consistency and interoperability with standards adopted by other governmental units of the state, other states, the federal government and nongovernmental persons interacting with governmental units of the State.

Under the proposed rule, governmental entities that choose to use or accept electronic signatures are required to determine the level of assurance necessary for persons signing electronically. The proposed rule identifies four levels of assurance and the standards that must be met for each signature level. The proposed rule also requires the Department to issue guidelines regarding the technical solutions available to accomplish the desired level of certainty for any given signature application.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled at a later date. The Department of Administration Legal Counsel Office is primarily responsible for the promulgation of the proposed rule.

Contact Information

If you have any questions regarding the proposed rule, please contact:

Donna Sorenson
Department of Administration
101 E. Wilson Street, 10th Floor
P.O. Box 7864
Madison, WI 53707–7864
Telephone: (608) 266–2887
E-Mail: Donna.Sorenson@Wisconsin.gov

State Public Defender CR 09–067

On August 24, 2009, the Office of the State Public Defender submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Revises Chapter PD 1, relating to the certification criteria and process for private attorneys seeking appointments to represent State Public Defender clients in legal proceedings.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled at a later date. The State Public Defender administrative office is responsible for preparing the rules.

Contact Information

Marilyn Parks
Phone: (414) 227–1817
Email: parksm@opd.wi.gov

State Public Defender CR 09–068

On August 24, 2009, the Office of the State Public Defender submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Revises Chapters PD 2, 3, and 6, relating to representation by the SPD of persons detained under Chs. 51 or 55, Stats., or subject to involuntary administration of psychotropic medication without a pre-determination of financial eligibility.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled at a later date. The State Public Defender administrative office is responsible for preparing the rules.

Contact Information

Marilyn Parks
Phone: (414) 227–1817
Email: parksm@opd.wi.gov

Transportation CR 09–070

On September 1, 2009, the Department of Transportation submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Repeals Chapters Trans 267 and 268, relating to emergency agricultural transportation permits and emergency energy conservation permits.

Agency Procedure for Promulgation

A public hearing is required and is scheduled for October 19, 2009. The Division of Motor Vehicles, Bureau of Vehicles Services; Division of Transportation System Development, Bureau of Highway Operations; and the Division of State Patrol/Motor Carrier Enforcement are the units responsible for promulgation of the rules.

Contact Information

Julie A. Johnson, Paralegal
Phone: (608) 267–3703

Rule–Making Notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

EmR0913

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on its emergency rule, revising s. ATCP 21.17, Wis. Adm. Code, relating to the quarantines of Brown County and Kenosha County for emerald ash borer.

Hearing Information

Tuesday, September 29, 2009

10:30 a.m. to 12:30 p.m.

19600 75th Street

Bristol, WI 53104–0550

Wednesday, September 30, 2009

10:30 a.m. to 12:30 p.m.

Agriculture & Extension Service Center, Room 161

1150 Bellevue St.

Green Bay, WI 54302

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by September 29, 2009, by writing to Jennifer Etter Goh, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4577. Alternatively, you may contact the DATCP TDD at (608) 224–5058. The hearing facility is handicap accessible.

Appearances at the Hearing and Submission of Written Comments

DATCP will hold two public hearings at the times and places shown above. DATCP invites the public to attend the hearings and comment on the emergency rule. Following the public hearings, the hearing record will remain open until Friday, October 9, 2009 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>.

Copies of Emergency Rules

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>.

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

This emergency rule creates quarantines for Brown County and Kenosha County for the emerald ash borer. Under this rule, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) quarantines Brown County and

Kenosha County to mitigate the movement of emerald ash borer to other areas of Wisconsin and other states.

DATCP is adopting this temporary emergency rule pending the adoption of federal quarantines for Brown County and Kenosha County. 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.

Statutes interpreted

Sections 93.07 (12) and 94.01, Stats.

Statutory authority

Sections 93.07 (1), 93.07 (12), 94.01 and 227.24, 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 adopt regulations to enforce laws under its jurisdiction. DATCP also has broad general authority, under ss. 93.07 (12) and 94.01, Stats., to adopt regulations to prevent and control plant pest infestations. Emerald ash borer quarantines created by this rule are part of an overall state strategy to prevent and control plant pest infestations, including emerald ash borer infestations. DATCP is adopting this temporary emergency rule, under authority of s. 227.24, Stats., pending the adoption of federal regulations on the same subject.

Background

The United States Department of Agriculture–Animal and Plant Health Inspection Services (APHIS) positively identified emerald ash borer in Brown County on July 24, 2009, and in Kenosha County on August 12, 2009. This emergency rule creates DATCP quarantines for Brown County and Kenosha County. A federal quarantine will be enacted approximately two to six weeks after a formal submission by the state plant regulatory official. Emerald ash borer is carried by untreated ash wood products. A two to six week delay until enactment of the federal quarantine leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

Emerald ash borer is an injurious exotic pest that now endangers Wisconsin’s 750 million ash trees and ash tree resources. This insect has the potential to destroy entire stands of ash, and any incursion of emerald ash borer can result in substantial losses to forest ecosystems and urban trees, as well as the state’s thriving tourism and timber industries. Efforts are currently underway in other states to eradicate emerald ash borer. Those efforts have proven to be costly, time–consuming, and not completely effective. In Michigan, emerald ash borer has caused an estimated \$11.6 million in landscape industry and wood lot losses and approximately \$2 million in lost nursery stock sales annually. The United States Department of Agriculture predicts the national urban impact from this pest could exceed \$370 billion.

DATCP has plant inspection and pest control authority under s. 94.01, Stats., to adopt rules establishing quarantines or other restrictions on the importation into or movement of

plants or other materials within this state, if these measures are necessary to prevent or control the spread of injurious plant pests. A quarantine order may prohibit the movement of any pest, or any plant, pest host or pest–harboring material, which may transmit or harbor a pest.

Emergency rule content

Under this emergency rule, movement of all hardwood (non–coniferous) firewood of any type plus movement of any ash wood out of Brown County and Kenosha County is prohibited with certain exceptions. The emergency rule will do the following:

- Create quarantines of emerald ash borer for Brown County and Kenosha County that prohibit the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of the county.
- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (some products, such as nursery stock, cannot be given an exemption).
- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement spells out what a company can and cannot do with regulated articles.

Comparison with federal regulations

Under the federal Plant Protection Act, APHIS has responsibility for excluding, eradicating and controlling serious plant pests, including emerald ash borer. APHIS has instituted statewide quarantines on the movement of all ash wood for Illinois, Indiana and Ohio, in addition to the Lower Peninsula of Michigan. APHIS has also instituted quarantines for Ozaukee, Washington, Sheboygan, Fond du Lac, Vernon and Crawford Counties in Wisconsin. The quarantines include restrictions on the movement of any hardwood (non–coniferous) firewood.

Comparison with rules in adjacent states

Surrounding states where emerald ash borer has been identified (Illinois, Indiana, Ohio, Minnesota and Michigan) have state and federal quarantines that prohibit the movement of regulated articles out of quarantined areas. A regulated article can only move out of quarantined areas after it is certified by USDA or state officials.

Small Business Impact

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in Brown County or Kenosha County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of ash products plus any hardwood firewood from Brown County and Kenosha County to locations outside of Brown County and Kenosha County.

The business impact of this emergency rule depends on the number of nurseries that sell/distribute ash nursery stock outside the county, firewood producers/dealers that sell/distribute outside the county, saw mills that move untreated ash stock outside the county, and green wood waste that is moved outside the county.

Brown County has 21 and Kenosha County has 17 licensed nursery growers that could possibly be growing ash nursery stock. Those growers will not be able to sell ash nursery stock

outside of the county during the quarantine. Thirteen known firewood dealers have been identified in Brown County and 18 known firewood dealers have been identified in Kenosha County. They would need to be certified under s. ATCP 21.20 to sell firewood outside of the county. To obtain certification a firewood dealer will have to pay an annual certification fee to DATCP of \$50 and treat the firewood in a manner that insures it is free of emerald ash borer. There is one veneer mill in Brown County and up to three wood processing mills in Kenosha County that deal with ash. To sell ash wood products outside of their counties they will have to enter into a compliance agreement with DATCP or APHIS that authorizes movement of ash products outside of their counties only when there is assurance that the movement will not spread the emerald ash borer to other locations.

Small business regulatory coordinator

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.

Environmental Impact

This emergency rule will not have a significant impact on the environment.

Fiscal Estimate

DATCP will have additional workload related to enforcing the quarantines but it will be able to absorb the projected workload and costs within DATCP’s current budget and with current staff. The presence of emerald ash borer may produce additional workload for local governments in Brown County and Kenosha County, but the quarantines will not themselves produce any local fiscal impact.

Notice of Hearing Transportation CR 09–070

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16 (1), 227.11 (2) and 348.25 (3), Stats., interpreting s. 348.17 (3) and (5), Stats., the Department of Transportation will hold a public hearing to consider the repeal of Chapters Trans 267 and 268, Wis. Adm. Code, relating to emergency agricultural transportation permits, and emergency energy conservation permits.

Hearing Information

October 19, 2009 Hill Farms State Transportation Bldg.
at 10:00 AM Room 254, 4802 Sheboygan Avenue
Madison, WI

An interpreter for the hearing impaired will be available on request for this hearing. Parking for persons with disabilities and an accessible entrance are available.

Agency Contact Person and Submission of Written Comments

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 Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707–7911. You may also contact Ms. Frazier by phone at (608) 266–7857 or e–mail: carson.frazier@dot.state.wi.us.

Copies of Proposed Rule

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>.

A copy of the rule may be obtained upon request from Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707–7911. You may also contact Ms. Frazier by phone at (608) 266–7857 or e–mail: carson.frazier@dot.state.wi.us.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted

Section 348.17 (3) and (5), Stats.

Statutory authority

Sections 85.16 (1), 227.11 (2), and 348.25 (3), Stats.

Explanation of agency authority

The Department is authorized to administer statutes and administrative rules related to vehicle weights, widths, heights and lengths. Prior to May 2006, the Department issued emergency declarations authorizing overweight loads of agricultural products during the Fall Harvest season. 2005 Wis. Act 364, effective May 4, 2006, eliminated this authority and replaced it with a statutory seasonal overweight allowance for agricultural products. Chapter Trans 267, which implemented emergency agricultural transportation permits is no longer needed. Although the Department has the authority to issue emergency energy conservation permits, it can do so only when the Governor declares an energy emergency pursuant to ss. 340.01(15s) and 348.17(3), Stats. It has been the Department’s practice to forego issuing energy emergency permits because it has relied on Emergency Executive Orders issued by the Governor to authorize oversize or overweight loads during energy emergencies. Because energy emergencies are declared by the Governor, pursuant to ss. 340.01(15s) and 348.17(3), Stats., and 49 C.F.R. sections 390.23 and 390.25, and because the Department has not issued separate energy emergency permits, Chapter Trans 268 is not needed.

Related statute or rule

Chapter 348 and s. 166.03 (1) (b) 1., Stats., Chapters Trans 250 to 278, Wis. Adm. Code, 49 C.F.R. sections 390.23 and 390.25.

Plain language analysis

Chapter Trans 267 governs emergency agricultural transportation permits under s. 348.17(4), Stats. Chapter Trans 268 governs emergency energy conservation permits under ss. 340.01(15s) and 348.17(3), Stats. The scope statement for this rule making stated that the Department proposes to combine ch. Trans 267 into ch. Trans 268 and to incorporate provisions consistent with other overweight rules. However, as the Department has considered such changes, the Department has determined that in fact neither rule is any longer valid, and thus proposes to repeal both rules.

Chapter Trans 267 interprets s. 348.17 (4), Stats. 2005 Wis. Act 364 repealed s. 348.17 (4), Stats., and instead created s. 348.17 (5), Stats., allowing overweight transport of certain crops during certain time periods without requiring a permit.

Ch. Trans 267 is no longer valid. Therefore, the Department proposes to repeal ch. Trans 267.

Trans 268 governs emergency energy conservation permits under ss. 340.01 (15s) and 348.17 (3), Stats. Section 348.17 (3), Stats., states that during an energy emergency the Department of Transportation, after consulting with the Department of Administration, may waive the statutory divisible load limitation on overweight loads, and authorize, for up to 30 days, overweight operation within certain limits. An energy emergency is certified by executive order of the Governor.

Section 348.17 (3), Stats., does not specifically state that the Department of Transportation may or shall require permits for overweight movement during an energy emergency. In practice, when the Governor has declared an energy emergency, the Department of Transportation has not required permits for overweight transport, but the statutory weight limitations specified in s. 348.17 (3), Stats., have been considered the limitations under the gubernatorial emergency declaration. Since s. 348.17 (3), Stats., will always govern and the Department has never required permits under ch. Trans 268, the Department proposes to repeal ch. Trans 268.

Comparison with federal regulations

No federal regulation covers the overweight permits addressed in these rules. Like all statutes and administrative rules governing overweight movement, these rules comply with federal law and regulation regarding operation on Interstate highways and other federal–aid highways.

Comparison with rules in adjacent states

Michigan: Not applicable.
Minnesota: Not applicable.
Illinois: Not applicable.
Iowa: Not applicable.

Summary of factual data and analytical methodologies

These two administrative rules no longer serve a purpose, as both are superseded by statute. Therefore, the Department proposes to repeal these two rules.

Analysis and supporting documentation used to determine effect on small businesses

Not applicable.

Small Business Impact

Repeal of these chapters has no effect on small business, since statutory language prevails.

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 Estimate

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.

The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Text of Proposed Rule

SECTION 1. Chapters Trans 267 and 268 are repealed.

Submittal of Proposed Rules to the Legislature

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

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 09-024

A rule-making order to revise Chapters NR 10 and 19, relating to the 2009 annual housekeeping rule pertaining to hunting, trapping and wildlife rehabilitation.

Natural Resources

Fish, Game, etc., Chs. NR 1—

CR 09-042

A rule-making order to revise Chapter NR 10, relating to the 2009 migratory game bird seasons and waterfowl hunting zones.

Transportation

CR 09-049

A rule-making order to revise Chapters Trans 510 and 512, relating to the transportation facilities economic assistance and development program, and the transportation infrastructure loan program.

Rule Orders Filed with the Legislative Reference Bureau

The following administrative rule orders have been filed with the Legislative Reference 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 Legislative Reference Bureau at bruce.hoesly@legis.wisconsin.gov or (608) 266–7590 for updated information on the effective dates for the listed rule orders.

Agriculture, Trade and Consumer Protection

CR 09–009

Revises Chapter ATCP 70, relating to food processing plants.
Effective 11–1–09.

Chiropractic Examining Board

CR 08–093

Revises Chapters Chir 1, 2, 3 and 5, relating to continuing education and requirements for proficiency in the use of automated external defibrillators.
Effective 11–1–09.

Employee Trust Funds

CR 08–026

Revises sections ETF 10.08 and 50.30, relating to termination of employment and administrative leave of absence.
Effective 10–1–09.

Natural Resources

Fish, Game, etc., Chs. NR 1–

CR 09–015

Revises Chapters NR 10, 11 and 15, relating to hunting, trapping, closed areas, and game refuges.
Effective 11–1–09 in part and 2–1–10 in part.

Pharmacy Examining Board

CR 09–019

Revises Chapters Phar 2 and 4, relating to the practical examination.
Effective 11–1–09.

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