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Jim Doyle, Governor
Mary P. Burke, Secretary

May 30, 2007

Honorable Members of the Wisconsin Senate and Assembly

Dear Senators and Representatives:

Attached you will find a set of emergency rules regarding the licensing of contractors and installers for installation and servicing of conveyances such as elevators, escalators and platforms lifts. The emergency rules implement provisions of 2005 Wisconsin Act 456. The emergency rules exclude the installation and servicing of conveyances for individual residential dwelling units from the licensing requirements.

The Department will be holding a hearing on the emergency rules in the month of June in accordance with the procedures specified under s. 227.24, Stats. The Department will be meeting with the conveyance safety code council within the next several months to develop permanent rules.

If you have any questions regarding this matter, please contact Chandra Miller Fienen at (608) 266-2125.

Sincerely,

Mary P. Burke
Secretary

DEPARTMENT OF COMMERCE

**EMERGENCY RULE RELATING TO
LICENSING OF ELEVATOR CONTRACTORS AND INSTALLERS**

Basis for Issuance of Emergency Rules

Under the nonstatutory provisions of 2005 Wisconsin 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.

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 Revisor of Statutes.

Dated at Madison this _____
day of _____, 2007,
by the Department of Commerce.

Mary P. Burke, Secretary

The Wisconsin Department of Commerce adopts an order to create ss. Comm 5.003 (10g), (27y) and (32s), Comm 5.37, Comm 5.38, Comm 5.383, Comm 5.385 and Comm 5.387 relating to licensing of elevator contractors and installers and affecting small businesses.

Analysis of Rule

1. Statutes Interpreted

Statutes Interpreted: ss. 101.981 (1) (c), 101.982, 101.984 and 101.985, Stats., as affected by 2005 Wisconsin Act 456, and ss. 101.02 (15) (j) and 101.17, Stats.

2. Statutory Authority

Statutory Authority: ss. 101.982 and 101.988 (2), Stats., as affected by 2005 Wisconsin Act 456, and s. 101.02 (1), Stats.

3. Related Statute or Rule

Statutes: s. 101.12 (1), Stats.,
Administrative Rules: Chapter Comm 18, Elevators, Escalators and Lift Devices

4. Explanation of Agency Authority

Under the authority of ss. 101.17 and 101.982 as affected by 2005 Wisconsin Act 456, Stats., the Department of Commerce has the responsibility to establish standards for safe installation and operation of conveyances, elevators, escalators and other lift devices. Currently, the Department has fulfilled this responsibility by promulgating the Elevators, Escalators and Lift Devices Code, chapter Comm 18.

5. Summary of Proposed Rules

The rules establish licenses for elevator contractors and elevator mechanics and registrations for elevator apprentices and elevator helpers. The licenses and registrations are being issued by declaration as emergency rules pursuant to the nonstatutory provisions of 2005 Wisconsin Act 456. The licenses and registrations are to remain in effect until permanent rules are implemented.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations

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

7. Comparison with Rules in 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 appear to license elevator contractors or installers.

8. 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 activity that would affect provisions of the Act.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report

The proposed rules implement mandates imposed by 2005 Wisconsin Act 456. The fiscal estimates prepared for the enabling legislation indicated that there are approximately 40 elevator contractors and 500 elevator mechanics that would be impacted by the legislation. The department does not believe that the rules will increase the effect on small businesses over that imposed by the Act.

An economic impact report has not been required pursuant to s. 227.137, Stats.

SECTION 1. Comm 5.003 (10g), (27y) and (32s) is created to read:

Comm 5.003 (10g) “Conveyance” has the meaning as given in s. 101.981 (1) (c), Stats., except it does not include any of the following:

(a) An elevator, a dumbwaiter, a platform lift, stairway chair lift and any other similar device serving an individual residential dwelling unit.

(b) A personnel hoist.

(c) A material hoist.

Note: Section 101.981 (1) (c), Stats., reads: “Conveyance” means an elevator, an escalator, a dumbwaiter, a belt manlift, a moving walkway, a platform lift, a personnel hoist, a material hoist and a stairway chair lift, and any other similar device, such as an automated people mover, used to elevate or move people or things, as provided in the rules of the department. “Conveyance” does not include a grain elevator, a ski lift or towing device, or an amusement or thrill ride.

Note: Section 101.981 (2), Stats., allows the department to modify the definitions under s. 101.981 (1), Stats.

(27y) “Material hoist” has the meaning as given in s. 101.981 (1) (g).

Note: Section 101.981 (1) (g), Stats., reads: “Material hoist” means a hoist, other than a personnel hoist, that is used to raise or lower materials during construction, alteration, or demolition of a building or structure.

(32s) “Personnel hoist” has the meaning as given in s. 101.981 (1) (h).

Note: Section 101.981 (1) (h), Stats., reads: “Personnel hoist” means a hoist that is installed inside or outside a building or structure during the construction, alteration, or demolition of the building or structure and that is used to raise and lower workers, other personnel, and materials which the hoist is designed to carry.

SECTION 2. Comm 5.37 is created to read:

Comm 5.37 Elevator contractor. (1) GENERAL. (a) Pursuant to s. 101.984 (1), Stats., no person or entity, as of June 1, 2007, may engage in the business or offer to engage in the business of constructing, installing, altering, servicing, replacing or maintaining conveyances unless the person or entity holds a license issued by the department as a licensed elevator contractor, except as provided under par. (b).

(b) A person, entity or business is not required to hold a license as a licensed elevator contractor to service or maintain existing conveyances within facilities or properties owned by the person, entity or business.

(2) A person or entity that is engaged in the business of constructing, installing, altering, servicing, replacing or maintaining conveyances is deemed by the department to hold a license as an elevator contractor provided the person or entity complies with all of the following:

(a) Is insured for worker’s compensation as required under ch. 102, Stats.

(b) Holds and retains the liability insurance as specified under s. 101.985 (1), Stats.

Note: Section 101.985 (1), Stats., requires the contractor to be insured for at least \$1,000,000 per occurrence because of bodily injury to or death of others, and is insured in the amount of at least \$500,000 per occurrence because of damage to the property of others.

SECTION 3. Comm 5.38 is created to read:

Comm 5.38 Elevator installers. Pursuant to s. 101.984 (2), Stats., no person, as June 1, 2007, may erect, construct, alter, replace, maintain, and repair conveyances unless the person holds a credential issued by the department as one of the following:

- (1) A licensed elevator mechanic.
- (2) A registered elevator apprentice.
- (3) A registered elevator helper.

SECTION 4. Comm 5.383 is created to read:

Comm 5.383 Elevator mechanic. A person who is engaged in the activity of erecting, constructing, altering, replacing, maintaining, and repairing conveyances is deemed by the department to hold a license as an elevator mechanic provided the person complies with either of the following:

- (1) Has completed an elevator apprenticeship program recognized under ch. 106, Stats., or recognized by the U.S. department of labor.
- (2) Has at least 1,000 hours of elevator mechanic level work experience per year for 3 consecutive years.

SECTION 5. Comm 5.385 is created to read:

Comm 5.385 Elevator apprentice. (1) A person who is indentured in an elevator apprenticeship program recognized under ch. 106, Stats., or by the U.S. department of labor is deemed by the department to hold a registration as an elevator apprentice.

(2) A person who holds a registration as an elevator apprentice shall work under the general supervision of an individual who holds a license as a licensed elevator mechanic.

SECTION 6. Comm 5.387 is created to read:

Comm 5.387 Elevator helper. A person who is not a licensed elevator mechanic or a registered elevator apprentice and who erects, constructs, alters, replaces, maintains, or repairs conveyances under the direct supervision of a person who holds a license issued by the department as an elevator mechanic is deemed by the department to hold a registration as an elevator helper.

(END)

EFFECTIVE DATE

Pursuant to s. 227.24, Stats., this rule shall take effect as an emergency rule upon publication in the official state newspaper and filing with the Revisor of Statutes.

(Note: Publication Date, June 1, 2007)