



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-030

AN ORDER to repeal RL 128.02 (2), 128.04 (5) and 128.07; to amend RL 128.02 (1) and (4) and 128.04 (1); to repeal and recreate RL 128.03; and to create RL 128.015 and 128.04 (1m) and Note, relating to education requirements prior to first renewal, courses and examinations, approval of educational programs, courses and instructors.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

02-27-02 RECEIVED BY LEGISLATIVE COUNCIL.

03-20-02 REPORT SENT TO AGENCY.

RNS:MO:ksm;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-030

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. The extent of the applicability of definitions in s. RL 128.015 should be clearly stated, e.g., by a phrase such as "In this chapter:" preceding the definitions. [See s. 1.01 (7), Manual.]

b. In s. RL 128.02 (1), "for the January 1, 2003 to December 31, 2004 biennium, and for each biennium thereafter," should be deleted and replaced by an initial applicability clause. That clause would be placed before the effective date clause and would not become part of the permanent rule.

3. Conflict With or Duplication of Existing Rules

It appears that current s. RL 128.06 (1) conflicts with proposed s. RL 128.02 (1). The second and third sentence of s. RL 128.06 (1) state: "A registered auctioneer may take the education examination . . . *in lieu of* the educational program set forth in s. RL 128.03. A registered auctioneer who passes the education examination *shall not be required to complete the educational program.*" [Emphasis added.] However, the proposed rule deletes "Except as provided in s. RL 128.06" from s. RL 128.02 (1), and therefore appears to require even a registered auctioneer who has passed an education examination to complete an educational program.

Also, how does the examination in s. RL 128.06 (1), which is *in lieu* of the educational program, relate to the examination in s. RL 128.03 (2), which follows the educational program?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the last sentence of s. RL 128.02 (1), "second renewal of the of the registration" includes "of the" one too many times.

b. Section RL 128.03 allows the department to "determine" the topics included in the six hours of instruction. Will this determination take the form of a rule? See ss. 227.01 (13) and 227.10 (1), Stats.

c. In ss. RL 128.03 (2) and 128.04 (1), the term "program provider" appears to mean not only a provider of a program, but also a provider of a course. Section RL 128.04 (1) implies a difference between a program and a course: ". . . approval from the department of an educational program *or a course*." [Emphasis added.] Should the term "program provider" be defined as a provider of either a program or a course or both in s. RL 128.015?

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
AUCTIONEER BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 02-)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to repeal RL 128.02 (2), 128.04 (5) and 128.07; to amend RL 128.02 (1), (4) and 128.04 (1); to repeal and recreate RL 128.03; and to create RL 128.015 and 128.04 (1m) and a Note following RL 128.04 (1m), relating to education requirements prior to first renewal, courses and examinations, approval of educational programs, courses and instructors.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 480.08 (6), Wis. Stats.

Statutes interpreted: s. 480.08 (6), Wis. Stats.

In this proposed rule-making order the Department of Regulation and Licensing, with the advice and counsel of the Auctioneer Board, amends ch. RL 128 for the purpose of reestablishing continuing education requirements for registered auctioneers. The current provisions in ch. RL 128, state the requirements for the approval of courses and instructors, the certification of completion of courses, and an optional test-out examination. However, these provisions have had no validity since December 31, 2000, because a sunset provision in s. RL 128.07 stated that this chapter only applied to registered auctioneers when renewing a registration as an auctioneer for the January 1, 1999-December 31, 2001 biennium.

In proposing to reestablish continuing education for auctioneers, the department proposes to amend several of the provisions that are in the current rule and to create a few new provisions. The following substantive changes are proposed:

Section RL 128.02 (1) reduces the number of continuing education hours from 9 to 6 hours each biennium. This section continues the requirement for an indefinite period of time. This section also exempts registrants from the continuing education requirement if they had obtained an initial registration certificate within 6 months before the renewal deadline.

Section RL 128.03 (1) gives the department the authority, with the advice and recommendations of the board, to determine the contents of the 6 hours of instruction every 2 years before the beginning of a new licensing biennium. Section RL 128.03 (2) requires a course provider to give

a written examination subsequent to the completion of instruction of each course. A registered auctioneer would be required to pass the examination in order to receive credit for the course. The rule also defines the nature of the examination and the requirements for passing the examination.

Section RL 128.04 (1m) describes the conditions for approval of distance education courses. "Distance education" is defined in s. RL 128.015.

TEXT OF RULE

SECTION 1. RL 128.015 is created to read:

RL 128.015 Definitions. (1) "Distance education" means the provision of educational programs or courses without an instructor or a representative of an approved school physically present with the students. "Distance education" includes the delivery of educational programs and courses on CD-ROM, videotape, computer disk, or the internet.

(2) "Hour" means a period of 50 minutes of actual instruction.

SECTION 2. RL 128.02 (1) is amended to read:

RL 128.02 (1) ~~Except as provided in s. RL 128.06, every~~ Every registered auctioneer applying to renew a registration for the ~~January 1, 1999-December 31, 2001~~ January 1, 2003 to December 31, 2004 biennium, and for each biennium thereafter, shall complete at least ~~9~~ 6 hours in an educational program ~~prior to January 1, 1999~~, except that a registered auctioneer who is initially registered less than 6 months prior to the first renewal date shall complete the educational program prior to the date for the second renewal of the of the registration under s. 440.08 (2), Stats. *in. app.*

SECTION 3. RL 128.02 (2) is repealed.

SECTION 4. RL 128.02 (4) is amended to read:

RL 128.02 (4) A registered auctioneer who acts as an instructor of an approved educational program or course shall receive credit toward satisfaction of the registered auctioneer's educational requirement. An instructor shall receive ~~1~~ one hour of credit for each 50 minutes of instruction. The registered auctioneer may not receive credit for teaching a specific course more than one time during any biennium.

SECTION 5. RL 128.03 is repealed and recreated to read:

RL 128.03 Courses; examinations. (1) COURSES. The educational program shall consist of 6 hours of instruction in topics determined by the department before the first day of each odd-numbered year. In making this determination, the department shall obtain the advice and recommendations of the board.

(2) EXAMINATIONS. A program provider shall give a written examination subsequent to the completion of instruction of each course. A registered auctioneer, except a registered auctioneer who teaches a course, shall pass the examination in order to successfully complete the course. The examination shall consist of at least 5 multiple-choice questions for each hour of instruction. The program provider shall design the examination so that a person who is competent to protect the public when practicing as an auctioneer would achieve a score of 70% or more. A registered auctioneer who fails to achieve a passing score on an examination shall be permitted to retake the examination within a reasonable time as determined by the program provider. A registered auctioneer who twice fails an examination shall not be credited with having completed the course and is required to retake the course.

SECTION 6. RL 128.04 (1) is amended to read:

RL 128.04 (1) A program provider seeking initial approval from the department of an educational program or a course shall submit its application on a form provided by the department prior to the first date the program or course is offered. The program provider shall include a designation of the courses to be provided, the name and outline of the courses, the name and qualifications of the instructors, and the ~~date, time segments, and location~~ of the courses. The department shall notify the provider whether the program or course has been approved or denied within 20 business days from the date the application is received. The department shall approve an educational program or course if the program provider submits to the department the information required by this subsection and agrees to comply with the provisions in subs. (2) to (6).

SECTION 7. RL 128.04 (1m) and Note are created to read:

RL 128.04 (1m) A program provider seeking the approval of a continuing education program or course that will be presented as distance education shall comply with sub. (1) and shall, additionally, describe to the department how the program provider will do all of the following:

- (a) Ensure that instructors approved by the department under sub. (6) are available to the students at reasonable times and by reasonable means.
- (b) Provide a reasonable level of examination security for the examination given at the end of each distance education continuing education course.
- (c) Sufficiently cover the subjects specified for continuing education courses.
- (d) Provide reasonable oversight to ensure that the students who take the examination are the enrolled students.
- (e) Provide a reasonable opportunity for student self-evaluation of mastery.

Note: Applications for educational program and course approval are available from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 8. RL 128.04 (5) is repealed.

SECTION 9. RL 128.07 is repealed.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____ Agency _____
Oscar Herrera, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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2/22/02

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 02-030)**

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the DEPARTMENT OF REGULATION AND LICENSING is submitting in final draft form rules relating to education requirements prior to first renewal, courses and examinations, approval of educational programs, courses and instructors.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : **REPORT TO THE LEGISLATURE**
DEPARTMENT OF REGULATION : **ON CLEARINGHOUSE RULE 02-030**
AND LICENSING : **(s. 227.19 (3), Stats.)**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

In this proposed rule-making order the department, with the advice and counsel of the Auctioneer Board, amends ch. RL 128 for the purpose of reestablishing continuing education requirements for registered auctioneers. The current provisions in ch. RL 128, state the requirements for the approval of courses and instructors, the certification of completion of courses, and an optional test-out examination. However, these provisions have had no validity since December 31, 2000, because a sunset provision in s. RL 128.07 stated that this chapter only applied to registered auctioneers when renewing a registration as an auctioneer for the January 1, 1999-December 31, 2001 biennium.

In proposing to reestablish continuing education for auctioneers, the department proposes to amend several of the provisions that are in the current rule and to create a few new provisions.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on March 26, 2002.

Appearances registering against the proposed rules for the purpose of requesting that 6 hours of continuing education be increased to 12 hours: Bob Hagemann, Burlington, WI, representing the Bob Hagemann Auction Service LLC; Allen H. Martin, Franklin, WI; and David Schroud, Madison, WI, representing WAA.

David Gerlach, Hartland, WI, representing the WAA, board member and chairman of legislative committee appeared.

Written comments were received from:

Timothy D. Sweeney, Auction Associates, Inc., Ripon, WI.

M.T. "DOC" Szatalowicz, Szatalowicz Realty, Auctioneer-Realtor, Stanley, WI.

Mary Jo Owen, Broker/Auctioneer/Personal Property Appraiser, M.J. Owen Realty & Auction, Rhinelander, WI

Paul Bunczak, Bunczak Real Estate & Auctions, Wausau, WI

Scott Varney, Vice President of WAA, Accredited Auctioneers Inc., Madison, WI

Sharon "Sherry" Blakeley

B&M Auctions, Browntown, WI

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 3 (second paragraph). "Also, how does the examination in s. RL 128.06 (1), which is *in lieu* of the educational program, relate to the examination in s. RL 128.03 (2), which follows the educational program?"

Response: The examination in s. RL 128.06 (1) is prepared and administered by the Department of Regulation and Licensing. The examination in s. RL 128.03 (2) is prepared and administered by the program provider.

The remaining recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 02-030)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to repeal RL 128.02 (2), 128.04 (5) and 128.07; to amend RL 128.02 (1), (4) and 128.04 (1); to repeal and recreate RL 128.03; and to create RL 128.015 and 128.04 (1m) and a Note following RL 128.04 (1m), relating to education requirements prior to first renewal, courses and examinations, approval of educational programs, courses and instructors.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 480.08 (6), Wis. Stats.

Statutes interpreted: s. 480.08 (6), Wis. Stats.

In this proposed rule-making order the Department of Regulation and Licensing, with the advice and counsel of the Auctioneer Board, amends ch. RL 128 for the purpose of reestablishing continuing education requirements for registered auctioneers. The current provisions in ch. RL 128, state the requirements for the approval of courses and instructors, the certification of completion of courses, and an optional test-out examination. However, these provisions have had no validity since December 31, 2000, because a sunset provision in s. RL 128.07 stated that this chapter only applied to registered auctioneers when renewing a registration as an auctioneer for the January 1, 1999-December 31, 2001 biennium.

In proposing to reestablish continuing education for auctioneers, the department proposes to amend several of the provisions that are in the current rule and to create a few new provisions. The following substantive changes are proposed:

Section RL 128.02 (1) increases the number of continuing education hours from 9 to 12 hours each biennium. This section continues the requirement for an indefinite period of time. This section also exempts registrants from the continuing education requirement at the time of their first renewal of registration if they had obtained an initial registration certificate within 6 months before the renewal deadline.

Section RL 128.03 (1) describes the contents of the courses that are part of the 12 hours of education. Section RL 128.03 (2) requires a course provider to give a written examination subsequent to the completion of instruction of each course. A registered auctioneer would be

required to pass the examination in order to receive credit for the course. The rule also defines the nature of the examination and the requirements for passing the examination.

Section RL 128.04 (1m) describes the conditions for approval of distance education courses. "Distance education" is defined in s. RL 128.015.

TEXT OF RULE

SECTION 1. RL 128.015 is created to read:

RL 128.015 Definitions. In this chapter:

(1) "Distance education" means the provision of educational programs or courses without an instructor or a representative of an approved school physically present with the students. "Distance education" includes the delivery of educational programs and courses on CD-ROM, videotape, computer disk, or the internet.

(2) "Hour" means a period of 50 minutes of actual instruction.

(3) "Program provider" means a provider of either a program or a course or both.

SECTION 2. RL 128.02 (1) is amended to read:

RL 128.02 (1) Except as provided in s. RL 128.06, every registered auctioneer applying to renew a registration ~~for the January 1, 1999-December 31, 2001 biennium~~ shall complete at least ~~9~~ 12 hours in an educational program ~~prior to January 1, 1999~~, except that a registered auctioneer who is initially registered less than 6 months prior to the first renewal date shall complete the educational program prior to the date for the second renewal of the registration under s. 440.08 (2), Stats.

SECTION 3. RL 128.02 (2) is repealed.

SECTION 4. RL 128.02 (4) is amended to read:

RL 128.02 (4) A registered auctioneer who acts as an instructor of an approved educational program or course shall receive credit toward satisfaction of the registered auctioneer's educational requirement. An instructor shall receive ~~1~~ one hour of credit for each 50 minutes of instruction. The registered auctioneer may not receive credit for teaching a specific course more than one time during any biennium.

SECTION 5. RL 128.03 is repealed and recreated to read:

RL 128.03 Courses; examinations. (1) COURSES. The educational program shall consist of 4 courses and shall cover all of the topics under each paragraph title, be presented during no less than the number of hours stated after each paragraph title, and include:

(a) Course A: 3 hours in the Wisconsin laws relating to auctioneer ethical and professional conduct.

(b) Course B: 3 hours in the Wisconsin laws relating to maintenance of records and trust accounts.

(c) Course C: 3 hours in federal laws relating to auctioneering and Wisconsin laws other than those described in pars. (a) and (b).

(d) Course D: 3 hours in one of the following electives:

1. Real estate auctions - practice and legal requirements.
2. Commercial auctions - practice and legal requirements.
3. Agricultural auctions - practice and legal requirements.
4. Antiques, collectibles, or household auctions - practice and legal requirements.
5. Other related types of specialty auctions – practice and legal requirements.

(2) EXAMINATIONS. A program provider shall give a written examination subsequent to the completion of instruction of each course. A registered auctioneer, except a registered auctioneer who teaches a course, shall pass the examination in order to successfully complete the course. The examination shall consist of at least 5 multiple-choice questions for each hour of instruction. The program provider shall design the examination so that a person who is competent to protect the public when practicing as an auctioneer would achieve a score of 70% or more. A registered auctioneer who fails to achieve a passing score on an examination shall be permitted to retake the examination within a reasonable time as determined by the program provider. A registered auctioneer who twice fails an examination shall not be credited with having completed the course and is required to retake the course.

SECTION 6. RL 128.04 (1) is amended to read:

RL 128.04 (1) A program provider seeking initial approval from the department of an educational program or a course shall submit its application on a form provided by the department prior to the first date the program or course is offered. The program provider shall include a designation of the courses to be provided, the name and outline of the courses, the name and qualifications of the instructors, and the ~~date, time segments, and location~~ of the courses. The department shall notify the provider whether the program or course has been approved or denied within 20 business days from the date the application is received. The department shall approve an educational program or course if the program provider submits to the department the information required by this subsection and agrees to comply with the provisions in subs. (2) to (6).

SECTION 7. RL 128.04 (1m) and Note are created to read:

RL 128.04 (1m) A program provider seeking the approval of a continuing education program or course that will be presented as distance education shall comply with sub. (1) and shall, additionally, describe to the department how the program provider will do all of the following:

(a) Ensure that instructors approved by the department under sub. (6) are available to the students at reasonable times and by reasonable means.

(b) Provide a reasonable level of examination security for the examination given at the end of each distance education continuing education course.

(c) Sufficiently cover the subjects specified for continuing education courses.

(d) Provide reasonable oversight to ensure that the students who take the examination are the enrolled students.

(e) Provide a reasonable opportunity for student self-evaluation of mastery.

Note: Applications for educational program and course approval are available from the Department of Regulation and Licensing, Office of Education and Examinations, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 8. RL 128.04 (5) is repealed.

SECTION 9. RL 128.07 is repealed.

(END OF TEXT OF RULE)

Section RL 128.02 (1) is effective for the January 1, 2003 to December 31, 2004 biennium and for each biennium thereafter. The remaining rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Oscar Herrera, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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6/10/22