

Clearinghouse Rule 19-067

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION REVISING PERMANENT RULES

The scope statement for this rule, SS 033-19, was published in Register No. 759B, on March 25, 2019, and approved by State Superintendent Carolyn Stanford Taylor on April 5, 2019. Pursuant to *Coyne v. Walker*, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope for this rule. *Coyne v. Walker*, 2016 WI 38, 368 Wis. 2d 444.

The State Superintendent of Public Instruction hereby proposes an order to create s. PI 7.05 (6); to repeal s. PI 7.05 (2) (Note) and 7.06; and to repeal and recreate s. PI 7.04 (3), relating to technical changes to PI 7 as a result of 2017 Wisconsin Act 108 review of administrative rules and other changes.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 121.55, Stats.

Statutory authority: s. 227.11 (2) (a) (intro.), Stats.

Explanation of agency authority:

The Department is required to determine the amount of compensation to be designated to parent contracts pursuant to s. 121.55 (1) (b), Stats. Under s. 227.11 (2) (a) (intro.), Stats., “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.” See also, *Wisconsin Ass'n of State Prosecutors v. Wisconsin Employment Relations Comm'n*, 2018 WI 17, ¶ 42 (“statutory mandates are also statutory authorizations, and authorization of an act also authorizes a necessary predicate act.”) (internal quotation marks omitted). As such, the proposed rule is necessary for the Department to effectively implement and administer parent contracts for pupil transportation under s. 121.55, Stats.

Related statute or rule: s. 227.29, Stats., relating to the agency review of rules and enactments.

Plain language analysis:

The objective of this rule is to make technical changes to subch. II of PI 7, which assists school districts in calculating the compensation to be provided in parents contracts for transporting pupils to and from school, as a result of the Department's review of administrative rules as required in 2017 Wisconsin Act 108. The Department has identified s. PI 7.04 (3) and 7.06 (1) to meet the criteria required in the report, because they are duplicative of s. 121.55 (1) (b), Stats., and are addressed in this proposed rule.

The Department has also identified further technical changes which do not meet the criteria listed in the report required of agencies under 2017 Act 108, but are necessary for clarifying current rule language around the process for parent contract disputes. For example, s. PI 7.06 (2) and (3) describe the dispute resolution procedures the Department would use to determine the type of compensation a parent receives for transportation of pupils to public and private schools under s. PI 7.04, and for transportation of pupils to private schools under s. PI 7.05, respectively. The proposed rule moves the sections governing each dispute procedure to their appropriate sections for ease of information while eliminating the duplicative language described above.

Summary of, and comparison with, existing or proposed federal regulations:

N/A

Summary of any public comments and feedback on the statement of scope for the proposed rule that the agency received at a preliminary public hearing and comment period held and a description of how and to what extent the agency took those comments into account and drafting the proposed rule:

A notice for a preliminary hearing on the scope statement for this proposed rule was submitted for publication in the March 25th, 2019 edition of the Administrative Register. The preliminary hearing was held on April 1st, 2019. No persons submitted testimony at the March 25th preliminary hearing and no persons submitted written testimony regarding the scope statement under consideration. Therefore, no changes were made in response to drafting the proposed rule.

Comparison with rules in adjacent states:

- **Iowa:** [Iowa Code §17A.7\(2\)](#), relating to petition for adoption, amendment, or repeal of rules — periodic comprehensive reviews, requires that beginning July 1, 2012, over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency's rules with the goal of identifying and eliminating all rules of the agency that are outdated, redundant, inconsistent, or incompatible with statute or its own rules or those of other agencies. An agency shall commence its review by developing a plan of review in consultation with major stakeholders and constituent groups. When the agency completes the five-year review of the agency's own rules, the agency shall provide a summary of the results to the Administrative Rules Coordinator and the Administrative Rules Review Committee.
- **Illinois:** [5 ILCS 100/5-130](#), relating to the periodic review of existing rules, requires the Joint Committee of Administrative Rules to evaluate the rules of each agency every five years and shall develop a schedule for this periodic evaluation. When evaluating the rules of each agency, the Joint Committee's review shall include an examination of the following: 1) organizational, structural, and procedural reforms that affect rules or rulemaking; 2) merger, modification, establishment, or abolition of regulations; 3) eliminating or phasing out outdated, overlapping, or conflicting regulatory jurisdictions or requirements of general applicability; and 4) economic and budgetary effects. The Joint Committee shall report its findings, conclusions, and recommendations, including suggested legislation, to the General Assembly by February 1 of each year.
- **Michigan:** [MCL 24.253 Sec. 53](#), relating to annual regulatory plan; link to website of office of regulatory reinvention, requires that each agency shall prepare an annual regulatory plan that reviews the agency's rules. In completing a review of rules pursuant to the annual regulatory plan, first priority shall be given to those rules that directly affect the greatest number of businesses, groups, individuals, and those rules that have the greatest actual statewide compliance costs for businesses, groups, and individuals. The review of rules shall state the following: 1) whether there is a continued need for the rules; 2) a summary of any complaints or comments received from the public concerning the rules; 3) the complexity of complying with the rules; 4) whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government; and 5) the date of the last evaluation of the rules and the degree to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules. In completing the annual regulatory plan, the agency shall include these rules as well as the rules it expects to process in the next year, the mandatory statutory authority it has not exercised, and the rules it expects to rescind in the next year. Annual regulatory plans shall be completed and filed with the Office of Regulatory Reinvention by July 1 of each year.
- **Minnesota:** [Minn. Statutes 2018 14.05 Subd. 5](#), relating to the review and repeal of rules, requires that by December 1 of each year, an agency must submit to the governor, the Legislative Coordinating Commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative.

Summary of factual data and analytical methodologies:

Under 2017 Wisconsin Act 108, each state agency that has promulgated rules in the Wisconsin Administrative Code is required to submit a biennial report to the Joint Committee for Review of Administrative Rules. The report must list the rules for which the following circumstances apply: 1) the rule is deemed unauthorized; 2) the authority to promulgate has been restricted; 3) the rule is deemed obsolete or has been rendered unnecessary; 4) the rule is duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a court ruling; and 5) the rule is deemed to be economically burdensome. Per 2017 Act 108, the report must also describe the agency's actions, if any, to address each of the rules listed.

This proposed rule is a technical change to rule provisions that meet the criteria listed in the report (note: it has been deemed that the applicable provisions of PI 7 had met the criteria under s. 227.29 (1) (d), i.e., rules that are duplicative of a state statute). The rule changes are designed to update the rule by clarifying current rule language and eliminating language that is duplicative of statutes. Without these changes, the Department will continue to administer the rules as they currently exist, which may create confusion for persons impacted.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

N/A

Anticipated costs incurred by private sector:

None.

Effect on small business:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Agency contact person: (including email and telephone)

Carl Bryan
Budget and Policy Analyst
Wisconsin Department of Public Instruction
adminrules@dpi.wi.gov
(608) 267-9127

Place where comments are to be submitted and deadline for submission:

As provided in s. 227.16 (2) (b), Stats., there is no requirement that a public hearing be held for this rule because the proposed rule brings an existing rule into conformity with a statute that has been changed.

SECTION 1. PI 7.04 (3) is repealed and recreated to read:

PI 7.04 (3) PARENT CONTRACT DISPUTES.

(a) If the school board and the parent or guardian cannot agree upon the amount of compensation under this section, the department shall determine the amount of compensation to be designated in the contract upon the request of both parties. The department shall determine the amount of compensation on a case-by-case basis based on criteria that may include the following:

1. The estimated cost, as determined by the parent or guardian, to provide the transportation.
2. The ability of the parent to provide the transportation.
3. Other information deemed appropriate by the department.

(b) If the department is asked to determine the amount of compensation under par. (a), the school board shall provide transportation for the pupil using one of the options under s. 121.55 (1) (a) or (c) to (e), Stats., until a determination by the department is made. The department's determination shall be final, subject to judicial review pursuant to ch. 227, Stats.

SECTION 2. PI 7.05 (2) (Note) is repealed.

SECTION 3. PI 7.05 (6) is created to read:

PI 7.05 (6) PARENT CONTRACT DISPUTES.

(a) If the school board and the parent or guardian cannot agree on the amount of compensation under this section, the department shall determine the amount of compensation to be designated in the contract upon the request of either party. The department shall determine the amount of compensation by reviewing the school board's estimated cost to transport the private school pupil and the school district's average cost per pupil for bus transportation in the previous school year determined under sub. (2).

(b) In conducting the review under par. (a), the department shall utilize all the written records described under sub. (2) to determine that the district properly applied the statutes to arrive at its estimate. The department's determination shall be final, subject to judicial review pursuant to ch. 227, Stats.

SECTION 4. PI 7.06 is repealed.

SECTION 5. EFFECTIVE DATE:

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

Dated this _____ day of _____, 2019

Carolyn Stanford Taylor
State Superintendent