

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 10/10/17
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) DHS 38, Substance Abuse Screening, Testing and Treatment for Certain Department Employment and Training Programs	
4. Subject Drug testing for participants in the FoodShare Employment and Training Program who are able-bodied adults.	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected N/A
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input checked="" type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule Wis. Stat. 49.79 (9) (d) directs the Department to develop and implement a drug screening, testing, and treatment policy to screen and, if indicated, test and treat participants in an employment and training program within the state's FoodShare program who are able-bodied adults for use of a controlled substance without a valid prescription for the controlled substance. This process will ensure that able-bodied adults without dependents who are receiving taxpayer supported workforce training services are work-ready. It will also provide individuals who do test positive for an illegal substance a path to treatment.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. From December 27, 2016 to January 10, 2017, the Department solicited information and advice from businesses, associations representing businesses, local governmental units, and individuals who may be affected by the proposed rules for use in analyzing and determining the economic impact that the rules would have on businesses, individuals, public utility rate payers, local governmental units, and the state's economy as a whole. The solicitation was published in the Administrative Register on December 27, 2016. In addition, the solicitation and a draft of the proposed rule were published to the Department's administrative rules website (https://www.dhs.wisconsin.gov/rules/permanent.htm). In addition, the Department began accepting public comments on the proposed rule on August 7, 2017. A public hearing was held on August 21, 2017, in Green Bay, WI. Public comments on the proposed rule were initially accepted until August 28, 2017. An extended period for public comment was established, beginning September 5th, 2017 and ending on September 12, 2017.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. DHS received comments from 14 counties, four IM agencies, and two county associations. See "Rulemaking Report to	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Legislature."

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule will ensure that able-bodied adults without dependents who are receiving taxpayer supported workforce training services are work-ready. It will also provide individuals who do test positive for an illegal substance a path to treatment. Wisconsin businesses will benefit by having more individuals ready to be hired and perform work. The proposed rules impose no compliance or reporting requirements on small businesses.

The rule will result in additional responsibilities for county Income Maintenance (IM) consortia and Milwaukee Enrollment Services (MilES), which will administer the screening questionnaire. The Department intends to automate the questionnaire through the CARES system, resulting in minimal workload for IM agencies (including MilES). IM agencies will be responsible for arranging the drug test for those individuals whose answers on the screening questionnaire indicate possible abuse of a controlled substance. It is estimated that roughly 67,400 individuals would be screened each year, with 3% or about 2,100 requiring a drug test. The annual cost of the drug test for local agencies is estimated to be \$101,500, including the costs of re-testing during treatment.

It is estimated that 11% of individuals (or 224) who take a drug test would test positive for controlled substances and would seek treatment at an average cost of \$3,880 per person. Approximately 60% of FoodShare recipients are Medicaid enrollees. It is assumed the remaining 40% would seek treatment services through county human services agencies or, in some cases, through private insurance. Treatment costs would total \$867,200 All Funds. Of this amount \$503,500 (\$306,300 FED and \$197,200 GPR) would be funded through the state Medicaid program and \$363,700 would be funded by private insurance or GPR in some cases. In cases where private insurance will be used, policies already cover substance abuse, and costs are already reflected in premiums. If an individual does not have private insurance and is not eligible for Medicaid, the Department anticipates using GPR to cover treatment costs.

These costs do not result from the rule itself but from the requirement under Wis. Stat. 49.79 (9) (d) to develop the drug screening, testing, and treatment policy.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

No reasonable alternative exists to rulemaking because the Wisconsin Legislature has directed the Department to promulgate rules to develop and implement the policy. Wis. Stat. 49.79 (9) (d) directs the Department to develop and implement a drug screening, testing, and treatment policy to screen and, if indicated, test and treat participants in an employment and training program within the state's FoodShare program who are able-bodied adults for use of a controlled substance without a valid prescription for the controlled substance.

16. Long Range Implications of Implementing the Rule

The rule will ensure that able-bodied adults without dependents who are receiving taxpayer supported workforce training services are work-ready. It will also provide individuals who do test positive for an illegal substance a path to treatment. Wisconsin businesses will benefit by having more individuals ready to be hired and perform work. The proposed rules impose no compliance or reporting requirements on small businesses.

17. Compare With Approaches Being Used by Federal Government

21 U.S.C. § 862b provides:

Notwithstanding any other provision of law, States shall not be prohibited by the Federal Government from testing welfare recipients for use of controlled substances nor from sanctioning welfare recipients who test positive for use of controlled substances.

The proposed rule will operationalize this federally-authorized testing in Wisconsin.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The only adjacent state that has passed legislation for drug testing for public assistance recipient is Michigan. In 1999, Michigan passed a law requiring all applicants for Michigan's Temporary Assistance for Needy Families program, the Family Independence Program, to undergo drug testing. That law was declared unconstitutional in a decision that held Michigan law authorizing suspicion-less drug testing of welfare recipients was unconstitutional because it was not intended to address public safety, and the state's desire to address substance abuse as a barrier to employment was not a special need sufficient to justify departure from the Fourth Amendment requirement of individualized suspicion. While initially reversed on appeal to the 6th Circuit Court of Appeals, the initial decision was vacated when the 6th Circuit Court decided to hear the case en banc. The full court split 6-6 without decision, and the effect was to affirm the District Court's decision and order.

In 2014, the Michigan legislature authorized a new three-county pilot project to evaluate drug testing of applicants for public assistance based on suspicion, and the bills were signed into law on December 2014. There are no administrative rules for this project, which is scheduled to run for one year ending in September, 2016.

Other states have adopted administrative rules relating to drug testing and treatment of recipients of public assistance include North Carolina, Tennessee, and Missouri. Unlike Wisconsin where the enabling statute addresses participation in work experience programs, the North Carolina, Tennessee, and Missouri rules determine eligibility to receive cash benefits.

As of March 2016, at least 17 states have proposed legislation requiring some form of drug testing or screening for public assistance recipients this year. The states include: Hawaii, Illinois, Iowa, Kentucky, Massachusetts, Minnesota, Mississippi, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, South Carolina, South Dakota, Vermont, Virginia and West Virginia.

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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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