

Clearinghouse Rule 21-010

ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION ADOPTING PERMANENT RULES

The scope statement for this rule, SS 152-30, was published in Register No. 780A2, on December 12, 2020, and approved by State Superintendent Carolyn Stanford Taylor on January 11, 2021.

The State Superintendent of Public Instruction hereby adopts an order to repeal s. PI 34.038; to amend s. PI 19.05 (intro.) and 34.040 (1) (a) ; and to create s. PI 34.040 (1) (d) and (2) (j), 34.108 (3) (o), and 40.01 (1m) and (6), relating to biennial cleanup of DPI administrative rules.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 115.28 (7) (a), 115.92, and 118.55, Stats.

Statutory authority: s. 115.28 (7) (a), 115.92 (3), and 118.55 (9), Stats.

Explanation of agency authority:

PI 19 (Education for school age parents): Pursuant to s. 115.92 (3), Stats., the state superintendent shall establish criteria by rule for the approval of programs for school age parents for the purpose of determining programs eligible for aid under s. 115.93, Stats.

PI 34 (Educator licenses): Pursuant to s. 115.28 (7) (a), Stats., the state superintendent shall make rules establishing standards of attainment and procedures for the examination and licensing of teachers of teachers within the limits prescribed in ss. 118.19 (2) and (3), 118.191, 118.1915, 118.192, 118.193, 118.194, and 118.195; prescribe by rule standards, requirements, and procedures for the approval of teacher preparatory programs leading to licensure, including a requirement that, beginning on July 1, 2012, and annually thereafter, each teacher preparatory program located in this state shall submit to the department a list of individuals who have completed the program and who have been recommended by the program for licensure under this subsection, together with each individual's date of program completion, from each term or semester of the program's most recently completed academic year; file in the state superintendent's office all papers relating to state teachers' licenses; and register each such license.

PI 40 (Early college credit program): Pursuant to s. 118.55 (9), Stats., the state superintendent shall promulgate rules to implement and administer the early college credit program, including rules establishing criteria for determining reimbursement amounts under s. 118.55 (7g).

Related statute or rule:

The proposed rule brings ch. PI 34 into alignment with s. 15.377 (8) (c), Stats., which requires the professional standards council for teachers shall consist of one person licensed as a teacher and actively employed in a tribal school, as defined in s. 115.001 (15m), recommended by a federally recognized American Indian tribe or band in this state that has a tribal school, nominated by the state superintendent of public instruction and with the advice and consent of the senate appointed.

Additionally, the proposed rule brings ch. PI 34 into alignment with s. 118.193, Stats., which creates a tier II license based on reciprocity.

Plain language analysis:

The objective of the proposed rule is to make technical changes to existing DPI rules, which include correcting unnecessary rules and rules superseded by and in conflict with state statutes, resulting from the department's biennial review of administrative rules as required under s. 227.29, Stats. Other technical changes identified to clarify existing rules but don't necessarily meet the criteria required under the statute will also be included in the proposed rule. The rule changes are as follows:

PI 19 (Education for school age parents): The language referring to approved costs under s. PI 19.05 is proposed to be repealed because the requirement to submit annual program plans to the department, which includes costs for school age parent programs being submitted for reimbursement, is no longer needed. The annual requirement to submit program plans was repealed in the department's previous biennial review under Clearinghouse Rule 19-069. The references to approved costs under s. PI 19.05 was intended to be removed under Clearinghouse Rule 19-069 but was omitted in error. Because the annual requirement to submit program plans is no longer in rule, the reference to approved costs under s. PI 19.05 must also be repealed to help clarify the rule as it has been rendered unnecessary.

PI 34 (Educator licenses): 2019 Wisconsin Act 43, relating to a license to teach based on reciprocity and granting rule-making authority, created a tier II license based on reciprocity. This has rendered s. PI 34.038 in conflict with statute because the original license based on reciprocity under this section was a tier I license. The proposed technical changes under this rule will address s. PI 34.038 to bring the rule chapter in conformity with the statutes.

Further, s. PI 34.108 governs the rules relating to the Professional Standards Council. Section PI 34.108 (3) is in conflict with s. 15.377 (8) (c) 14., Stats., which requires that a member of the Tribal School shall be included as a member of the Council. This is already being done in alignment with the statute but a technical change is needed to amend s. PI 34.108 (3) to include a member of a Tribal School.

PI 40 (Early college credit program): The rule is missing definitions for "state superintendent" and "department," which is not one of the criteria required in the biennial review of administrative rules under s. 227.29, Stats. However, a technical correction is required to create definitions for both terms in the rule per rule drafting guidelines prescribed in statute.

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

There are no comparable existing or proposed federal regulations intended to address the activities regulated by this proposed rule.

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:

The Department held a preliminary public hearing and comment period on January 8, 2021, and did not receive any comments on the statement of scope for the proposed rule.

Comparison with rules in adjacent states:

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.

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 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.

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 s. 227.29, Stats., 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. Under s. 227.29 (2), Stats., the report must also describe the agency's actions, if any, to address each of the rules listed and must include an explanation for any listed rule for which the agency has not taken any action. The proposed rules listed in this statement of scope are technical changes to rules with provisions that meet the criteria listed in the report (note: there were no rules that were deemed unauthorized, duplicative, economically burdensome, or rules whose authority to promulgate had been restricted).

The proposed rule changes are technical in nature and do not contain any substantive changes in policy. The rule changes are designed to update DPI rules by deleting rule provisions deemed unnecessary and conforming DPI rules with recent statutory changes and agency practice. The additional technical revisions made under this scope statement are designed to conform current rule with rule drafting guidelines prescribed in statute and also do not contain any substantive changes in policy. Without these rule changes, the department will continue to administer the rules as they currently exist.

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:

N/A

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)

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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. However, pursuant to s. 227.14 (2) (a) 8., Stats., written comments on the rule may be submitted until March 5, 2021, by completing the form on the Legislature's [website](#).

RULE TEXT**SECTION 1. PI 19.05 (intro.) is amended to read:**

PI 19.05 Reimbursement. Contingent upon receipt of the statement of receipts and disbursements under s. 115.92 (2), Stats., the state superintendent shall authorize reimbursement to the board, CESA, or fiscal agent for an agreement under s. 66.0301, Stats., for the following ~~approved~~ costs for school age parent programs ~~which have been approved under s. PI 19.03 (3)~~:

SECTION 2. PI 34.038 is repealed.**SECTION 3. PI 34.040 (1) (a) is amended to read:**

PI 34.040 (1) (a) Except as provided in ~~par.~~ pars. (b) and (d), a tier II license authorizes an individual to teach or work in the license area specified under subch. VI, VII, or VIII.

SECTION 3. PI 34.040 (1) (d) is created to read:

PI 34.040 (1) (d) A license issued under sub. (2) (j) authorizes the license holder to do one of the following:

1. Teach in a license area under subch. VI. The state superintendent shall determine the subjects and grade levels of the license based on all of the following:
 - a. The subjects and grades the individual is authorized to teach under his or her license granted by another state.
 - b. The individual's teaching experience.
2. Work as an administrator in a license area under subch. VIII. The state superintendent shall determine the license area of the license based on all of the following:
 - a. The individual's license granted by another state.
 - b. The individual's experience as an administrator.

SECTION 4. PI 34.040 (2) (j) is created to read:

PI 34.040 (2) (j) *License based on reciprocity.* The applicant meets all of the following requirements:

1. The applicant meets all of the requirements under s. 118.193 (2), Stats., for a license issued under sub. (1) (d) 1. or all of the requirements under s. 118.193 (3), Stats., for a license issued under sub. (1) (d) 2.
2. The applicant's license issued by another state is in good standing. In this paragraph, "good standing" means the license is valid, current, and the individual is not under investigation by the licensing authority for any reason.

3. The applicant meets the requirements under s. 118.193 (2) (b) or (3) (b), Stats., as determined by the applicant engaging in full-time teaching or work as an administrator for at least one year.

SECTION 5. PI 34.108 (3) (o) is created to read:

PI 34.108 (3) (o) One person licensed as a teacher and actively employed in a tribal school, as defined in s. 115.001 (15m), Stats., recommended by a federally recognized American Indian tribe or band in this state that has a tribal school.

SECTION 6. PI 40.01 (1m) and (6) are created to read:

PI 40.01 (1m) "Department" means the Wisconsin department of public instruction.

(6) "State superintendent" means the state superintendent of public instruction.

SECTION 7. 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 _____, 2021

Jill K. Underly, PhD
State Superintendent