

Report From Agency
STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
REPORT FROM AGENCY
CLEARINGHOUSE RULE CR 22-048

In the matter of rulemaking proceedings before the Department of Transportation Wisconsin Administrative Code chs. Trans 1-515, relating to inclusive language in administrative rules.

I. THE PROPOSED RULE:

The proposed rule revisions and the analysis are attached.

II. REFERENCE TO APPLICABLE FORMS:

No forms are newly required by these rule revisions. The agency will update forms as necessary during ordinary reordering or replenishment to eliminate disfavored language or make forms consistent with the administrative code.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA are attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

Executive Order #15 provides for each state agency to review its administrative rules and replace any derogatory or offensive terminology with current inclusive terminology. This includes replacing "mentally retarded" with "intellectually disabled," "mental retardation" with "intellectual disability," and "handicapped" with "disabled."

The Legislative Reference Bureau Bill Drafting Manual directs agencies to avoid disfavored terminology such as "disabled person" and "person who suffers from a disability (or other condition)," unless to conform language to federal law. The Legislative Reference Bureau Bill Drafting Manual also directs agencies to consult The Chicago Manual of Style if a question of style, grammar, or usage is not answered in the

drafting manual. The Chicago Manual of Style states that, in general, it is best to “emphasize the person, not a characteristic.”

This proposed rule is intended to accomplish only terminology changes in existing rules to eliminate outdated language and replace language that is derogatory or offensive with current, inclusive terminology. This rulemaking is intended to leave the scope and subjects of existing rules unchanged, resulting in no substantive effect on any entity.

The rule replaces “disabled persons” with “individuals with disabilities;” “elders” with “seniors;” and “Indian” or “Native American” with “American Indian.”

According to the Legislative Reference Bureau Bill Drafting Manual, the preferred terminology when referring to American Indian tribes, bands, or individuals is “American Indian.” Previously, the Trans code referred to American Indian tribes, bands, or individuals as “American Indian,” “Indian,” or “Native American,” interchangeably. This rule amends all references to “Indian” and “Native American” to “American Indian” for consistency and accuracy.

This rule also amends many references to gender-specific language, such as “his or her,” “he or she,” and “him or her” and replaces these pronouns to the corresponding nouns. The Legislative Reference Bureau Bill Drafting Manual directs each agency, when drafting new rules and revisiting existing rules, to eliminate all terminology that is not sex-neutral and avoid the repetitious use of phrases of “he or she” and “his or her.” The rule changes reflect every instance in which replacing the pronoun with the corresponding noun would not create undue confusion.

V. SUMMARY OF PUBLIC COMMENTS AND THE DEPARTMENT’S RESPONSES, AND EXPLANATION OF ANY RESULTING MODIFICATIONS TO THE PROPOSED RULES:

A public hearing was held in-person on July 12, 2022, at 4822 Madison Yards Way, Room N134, Madison, WI 537005 at 9:00 a.m. Comments could be submitted at the hearing, by postal mail, or by email to DOTAdminRules@dot.wi.gov. The published deadline for submission of comments was 4:30 p.m. on July 12, 2022. No public comments were received, and no members of the public attended the hearing.

VI. CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE:

No changes to the Fiscal Estimate and Economic Impact analysis were made.

The rule analysis was updated to reflect changes made in response to the Legislative Council Rule Clearinghouse Report, as described below.

VII. RESPONSE TO LEGISLATIVE COUNCIL STAFF COMMENTS:

Comment 1.

In the department's summary for the proposed rule, an entry should be inserted to identify each statute that the proposed rule interprets. An agency may promulgate rules interpreting the provisions of a statute enforced or administered by the agency, if an agency considers it necessary to effectuate the purpose of the statute. [ss. 227.11 (2) (a) (intro.) and 227.14 (2) (a) 1., Stats.] Consider, for example, citing the original subject-matter statutes interpreted for each of the provisions affected in the proposed rule. This could include citing s. 85.21, Stats., for amendments made in ch. Trans 1, citing s. 85.22, Stats., for amendments made in ch. Trans 2, and so on.

Agency response: The agency revised the summary to include the interpreted statutes at the suggestion of the Rules Clearinghouse.

Comment 2.

The caption for the proposed rule lists the treatment of s. Trans 138.03 (2) twice. The second reference can be deleted.

Agency response: The agency amended the caption to remove the second reference to s. Trans 138.03 (2) at the suggestion of the Rules Clearinghouse.

VIII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

No report from the SBRRB was received.