

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.

The State Superintendent of Public Instruction hereby proposes an order to amend s. PI 7.06 (2) (intro.); and to repeal s. PI 7.04 (3) and 7.06 (1), 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 parent 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 ss. 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.

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:** Under [Iowa Code Chapter 285.1](#), in a district where transportation by school bus is impracticable or where school bus service is not available, the school board may require parents or guardians to furnish transportation for their children to the schools designated for attendance. The parent or guardian shall be reimbursed for such transportation service for public and nonpublic school pupils by the board of the resident district in an amount equal to eighty dollars plus seventy-five percent of the difference between eighty dollars and the previous school year's statewide average per pupil transportation cost, as determined by the Iowa Department of Education. However, a parent or guardian shall not receive reimbursement for furnishing transportation for more than three family members who attend elementary school and one family member who attends high school.
- **Illinois:** Pursuant to [Illinois Administrative Code Title 23 Subtitle A Ch. I Subch. C Part 120 Subpart B](#), a custodian of a qualifying pupil shall be entitled to reimbursement by submitting claim forms provided by the State Board of Education for qualified transportation expenses paid by such custodian during the school year. "Qualified pupils" are defined as individuals who reside in the state of Illinois; are under the age of 21 at the close of the school year for which reimbursement is sought; and was a full-time pupil enrolled in a kindergarten through 12th grade education program during the school year for which reimbursement is sought. "Qualified transportation expenses" are defined as costs reasonably incurred by the custodian to transport, for the purposes of attending regularly scheduled day-time classes, a qualifying pupil between the qualifying pupil's residence and the school at which the qualifying pupil is enrolled. For reimbursements of qualified transportation expenses incurred in 1987-1988 and thereafter, the amount of reimbursement shall not exceed the prior year's state reimbursement per pupil for transporting pupils.
- **Michigan:** According to [Michigan Administrative Code R 340.281-282](#), the board of education of the school district may contract for transportation by private car for transportation of pupils within the district whenever the board of education determines that the cost is excessive for transportation by bus of children living in locations isolated from their schools. Additionally, the board of education of the school district may contract for transportation for private car for transportation of pupils outside the district whenever the board of education determines that the cost is excessive for transportation by bus of children living in locations isolated from their schools. Under the rule, "private car" means a privately owned vehicle with a passenger capacity of 10 or less, including the driver.
- **Minnesota:** In accordance with [Minn. Stat. §124D.03, Subd. 8](#), a parent or guardian may qualify to be reimbursed by the nonresident district for the costs of transportation from the pupil's residence to the border of the nonresident district if the pupil is from a family whose income is at or below the poverty level, as determined by the federal government. The reimbursement may not exceed the pupil's actual cost of transportation or 15 cents per mile traveled, whichever is less. Reimbursement may not be paid for more than 250 miles per week.

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 Wisconsin 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), Stats., 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
Administrative Rules Coordinator
Wisconsin Department of Public Instruction
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(608) 267-9127

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

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at adminrules@dpi.wi.gov. The Department will publish a hearing notice in the Administrative Register which will provide information on the deadline for the submission of comments.

SECTION 1. PI 7.04 (3) is repealed.

SECTION 2. PI 7.06 (1) is repealed.

SECTION 3. PI 7.06 (2) (intro.) is amended to read:

PI 7.06 (2) The department shall determine the amount of compensation for a contract under s. PI 7.04 upon the request of ~~both parties~~either party. The department shall determine the amount of compensation on a case-by-case basis based on criteria that may include the following:

SECTION 4. 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