

Report From Agency
DEPARTMENT OF REVENUE
CLEARINGHOUSE RULE NUMBER 19-158
SECTION 227.19(2) AND (3), STATS., REPORT

Basis and Purpose of the Proposed Rule

The rule implements 2017 Wisconsin Act 278 in order to adopt uniform procedures for making predeterminations of whether an individual would be disqualified from obtaining a license or permit with the department due to his or her conviction records prior to that individual submitting a full application for licensure or permit.

Public Hearing

A public hearing was held on January 17, 2020. No one appeared at the hearing.

No public comments to the proposed rule order were received.

Legislative Council Staff Recommendations

Legislative Council suggested that DOR consider the following:

- *Statutory Authority*

In the analysis for the proposed rule, the department could consider removing the statutory authority citations to ss. 227.11 (2) and 125.03 (1) (a), Stats., which provide general authority for the department to promulgate rules. The listing of statutory authority already cites the more specifically applicable statute, s. 111.335 (4) (f) 6., Stats., which requires a state licensing agency to promulgate rules to implement a predetermination procedure for applicant eligibility.

DOR's response – These statutory authority citations were not removed as they all apply for referencing statutory authority.

- *Form, Style and Placement in Administrative Code*

1. In the explanation of agency authority in the department's analysis for the proposed rule, the listing of the authority in 2017 Wisconsin Act 278 to promulgate rules using the procedure under s. 227.24, Stats., should be removed. That statutory section relates to emergency rulemaking, which does not apply to this proposed rule.

DOR's response – Removed reference to s. 227.24, Stats.

2. Rules relating to requirements for permits issued under ch. 125, Stats., are found in ch. Tax 7 (relating to fermented malt beverages) and ch. Tax 8 (relating to intoxicating liquors), and rules relating to requirements for permits issued under ch. 139, Stats., are found in ch. Tax 9 (relating to cigarettes). The department could consider placing the proposed rule in each of those chapters, rather than in ch. Tax 1 (general administration). If placed directly in those chapters, the language in sub. (1) would refer to a permit under ch. 125, Stats., when the rule is placed in ch. Tax 7 or 8, and the language in sub. (1) would refer to a permit under ch. 139, Stats., when the rule is placed in ch. Tax 9.

DOR's response – We left the permit predetermination requirements in ch. Tax 1.

3. In s. Tax 1.18 (2) (b) 2., revise the phrase "The date and description, including the nature and circumstances, of the crime" to "The date of conviction for any crime described in subd. 1. and a description of the nature and circumstances of the crime". The latter language tracks the statutory language and removes any ambiguity as to whether the applicant should indicate the date of commission, or the date of conviction, for each crime.

DOR's response – "The date and description, including the nature and circumstances, of the crime" is changed to "The date of conviction for any crime described in subd. 1. and a description of the nature and circumstances of the crime".

4. In s. Tax 1.18 (2) (d), revise the phrase "the costs to review the application and conduct an investigation on the individual" to "the cost of making the determination" to match the statutory language. Alternatively, the department could specify in the proposed rule that in order to make the determination, the department must review the application and conduct an investigation on the individual. This will more closely align the fee charged by the department to the costs allowed by the statute.

DOR's response – Added "In order to make the predetermination, the department shall review the application and conduct an investigation on the individual." The phrase "the costs to review the application and conduct an investigation on the individual" is changed to "the cost of making the predetermination".

5. In s. Tax 1.18 (3), revise the phrase "will provide a written response to each predetermination request" to "shall make a predetermination and send the predetermination in writing" or "shall make a determination and send the determination in writing" in order to comply with the statutory mandate. Using the phrase "provide a written response" could be interpreted as requiring only a written acknowledgement of the application.

DOR's response – The phrase "will provide a written response to each predetermination request" is changed to "shall make a predetermination and send the predetermination in writing".

- *Adequacy of References to Related Statutes, Rules and Forms*

In s. Tax 1.18 (2) (a), a note should be inserted to indicate how the referenced form may be obtained. [s. 1.09 (3), Manual.]

DOR's response – A note was added referencing where the form is located on our website.

- *Clarity, Grammar, Punctuation and Use of Plain Language*

1. In s. Tax 1.18 (2) (a), revise the phrase "to the Department of Revenue" to the phrase "to the department". Section Tax 1.001 (1) already defines "department" to mean the Wisconsin Department of Revenue.

DOR's response – This change was made.

2. In s. Tax 1.18 (2) (b), consider inserting an additional subdivision to require all other information that is requested in the application form.

DOR's response – This change was not done as adding all the other information requested in the application form may require multiple changes to the rule in the future if the required information needed on the form is changed.

3. In s. Tax 1.18 (2) (c), consider revising the provision from the statements that "There is no requirement for an individual to first obtain a predetermination from the department. An individual may submit an application for a permit." to the statement that "An individual may submit an application for a permit without obtaining a predetermination from the department under this section."

DOR's response – "There is no requirement for an individual to first obtain a predetermination from the department. An individual may submit an application for a permit." is changed to "An individual may submit an application for a permit without obtaining a predetermination from the department under this section."

4. The department should specify what standards will apply in making a predetermination. For example, ss. 125.04 (5) (a) 1. and (b), 125.12, and 139.34 (1) (c), Stats., identify particular conviction records that would disqualify a person from holding a permit under those chapters. If those standards will apply for a predetermination under the proposed rule, those standards should be incorporated.

DOR's response – A listing of conviction records that would disqualify a person from holding a permit is listed on our website at <https://www.revenue.wi.gov/Documents/alcohol-beverage-offenses.pdf>. The law only requires that we publish this list on the internet, pursuant to s. 111.335 (4) (e), Stats.

Regulatory Flexibility Analysis

The proposed rule order does not affect small businesses.

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