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**DATE:** March 3, 2022

**TO:** Michael J. Queensland  
Senate Chief Clerk  
Room B20 Southeast, State Capitol  
PO Box 7882  
Madison, WI 53707-7882

Edward A. Blazel  
Assembly Chief Clerk  
17 West Main Street, Room 401  
Madison, WI 53703

**FROM:** Amy Pechacek, Secretary-designee  
Department of Workforce Development

**SUBJECT:** **Notice and Report for Final Draft Form of Proposed Rule  
Clearinghouse Rule 22-008: Vocational Rehabilitation**

### **Report From Agency**

Pursuant to s. 227.19 (2), Stats., the Department of Workforce Development is submitting for legislative review the attached proposed rule in final draft form for Clearinghouse Rule 22-008. The governor approved this proposed rule on February 24, 2022. The analysis required under s. 227.14 (2), Stats., is included in the proposed rule. Also attached is the Fiscal Estimate & Economic Impact Analysis and the Rules Clearinghouse report and comments.

### ***Basis and Purpose***

The Department proposes a rule to revise chs. DWD 65, 68, and 75, which are administered by the Department's Division of Vocational Rehabilitation (DVR). As explained in the rule's analysis, the following statutes provide the basis for the Department's authority to promulgate the rule: ss. 47.02 (1), (1m), (5) and (7) (a) and (b) 2., 103.005 (1), and 227.11 (2) (a), Stats.

Under ch. DWD 65, DVR implements a waiting list called an order of selection (OSS) that is used to determine which categories of individuals will receive vocational rehabilitation services when resources are not available to serve all categories of eligible individuals who apply for the services. The purposes of the

proposed revisions to the chapter are to do the following: 1) allow DVR to exercise authority granted under federal law to provide services and equipment for maintaining employment to individuals regardless of their category under an OSS; 2) repeal definitions that are inconsistent with federal regulations; 3) allow consumers to make oral requests for reviewing category placement; 5) resolve an inconsistency regarding DVR's authority to determine an individual's position under an OSS; and 6) make minor changes to terms used in the chapter.

Chapter DWD 68 imposes requirements for the protection, use, and release of personal information about individuals who apply for or receive vocational rehabilitation services. The purposes of the proposed revisions to the chapter include the following: 1) referring to those individuals as consumers so that the references are consistent with other administrative code chapters; 2) ensuring that ch. DWD 68 applies to information about consumers and is not limited to information in case records; 3) making it easier for consumers and other persons to request that DVR disclose consumer information; 4) ensuring consistency with federal regulations; and 5) eliminating outdated language regarding photocopies.

Chapter DWD 75 establishes procedures for appealing DVR determinations relating to eligibility for providing, denying, or altering vocational rehabilitation services. For efficient administration of those services, the rule shortens the deadline for filing appeals from 12 months to 180 days. The rule also revises deadlines in chs. DWD 65 and 68 to be consistent with the 180-day deadline. Other purposes of the revisions to ch. DWD 75 include the following: 1) reversing the order of proceedings so that consumers can respond after DVR makes its case; 2) eliminating a motion deadline; 3) allowing certain documents to be sent by electronic mail; and 4) ensuring consistency with federal regulations.

### ***Public Hearings***

The Department did not hold a preliminary public hearing and comment period on the proposed rule. The Department held a public hearing on the proposed rule on February 18, 2022. Attached to this notice and report is a public hearing summary that identifies that individuals who commented on the proposed rule, summarizes their comments, and provides the Department's responses to those comments.

### ***Changes to the Analysis or Fiscal Estimate***

The Department revised the analysis to indicate the deadline for comments and to reflect modifications the Department made to the rule in response to the Rules Clearinghouse and public comments. The Department made no other changes to the analysis or fiscal estimate.

### ***Responses to Rules Clearinghouse***

The Rules Clearinghouse made recommendations and comments related to the following:

***Form, Style and Placement in the Administrative Code:*** The Department revised the proposed rule as recommended by the Rules Clearinghouse.

***Clarity, Grammar, Punctuation and Use of Plain Language:*** The Department revised the proposed rule as recommended by the Rules Clearinghouse in comments 5b., 5c., 5d., 5g. and 5h. The Department's response to the remaining comments are as follows:

***Comment 5a.:*** The Department intended to refer to information about consumers and not to the defined term, "consumer identifying information." To clarify intent and avoid confusion, the Department revised the rule to substitute "information about consumers" for "consumer information."

**Comment 5e.:** The Department revised the rule to combine s. DWD 68.15 (1) and (2) into s. DWD 68.15. This revision provides the requested clarification.

**Comment 5f.:** The Department does not have a specific procedure or address for submitting requests to amend information. Therefore, the Department did not include a note in the rule.

**Comment 5i.:** The Department prefers to give hearing officers the discretion to determine whether a person has filed a good cause explanation for failure to participate in a prehearing conference. Therefore, it is not necessary to elaborate on the meaning of "good cause" for this purpose. This approach is similar to other Department rules that give administrative law judges (ALJs) the discretion to determine whether good cause is shown for an ALJ to reopen a hearing after a complainant has failed to appear. See ss. DWD 218.18 (4), 220.21 (4), 221.19 (4), 223.17 (4), 224.19 (4), and 225.22 (4). This approach is also consistent with rules of other agencies that give ALJs the discretion to determine whether good cause has been shown for an ALJ to take specified actions. See ss. ERC 94.03 (8) (a), Ins 5.39 (7), LIRC 1.07, PI 34.105 (10), RR 1.05 (1), and SPS 1.09 (2).

### ***Final Regulatory Flexibility Analysis and Response to SBRRB***

The proposed rule does not have an effect on small businesses, as defined in s. 227.114 (1), Stats. Therefore, the Department did not submit the proposed rule to the Small Business Regulatory Review Board (SBRRB) and a final regulatory analysis is not required.