



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 14-028

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

a. The “Explanation of Agency Authority” explains the department’s rule-making authority regarding which entity is required to inspect a child care provider under s. 48.658 (4), Stats., for child safety alarms. Specifically, s. 48.658 (4), Stats., states that it is the county department that must inspect a child care provider that is certified under s. 48.651, Stats. (certified child care provider). Subsection (4) does not reference the ability for “an agency with which the department contracts” to count for purposes of this inspection. The department should explain the statutory authority for allowing such an agency to conduct inspections of a certified child care provider for child safety alarms.

b. Throughout the proposed rule, one of the conditions that trigger the requirement for a vehicle to be equipped with a child safety alarm is if “the vehicle is used to transport children in care”. [For example, see s. DCF 202.08 (9) (f) 1. c.] The statutory language, however, refers to the vehicle being “used to transport children to and from the child care provider”. [See s. 48.658 (1) (b), Stats.] It is unclear what the term “in care” means, but it appears to be broader than the statutory language. The department should define what the term “in care” means and explain the statutory authority for using this term.

2. Form, Style and Placement in Administrative Code

a. In the introductory clause, “252.12 (2)” should be replaced with “251.12 (2)” in the “renumber” portion, and “(b)” should be inserted after “252.06 (2)” in the “create” portion.

b. In SECTION 2, s. DCF 202.08 (9) (f) 2. creates a requirement that “the certified child care operator shall ensure that no person may shut off a child safety alarm unless the person first inspects the vehicle to ensure that no child is left unattended in the vehicle”. Is a similar duty placed upon: (1) a certified child care operator of a school-age program; (2) a family child care provider; (3) a group child care provider; and (4) a child care provider of a school-operated program? If so, the department should more clearly state the duty for those providers in the proposed rule.

c. In SECTION 2, there is a requirement that “[n]o person may shut off a child safety alarm unless the person first inspects the vehicle to ensure that no child is left unattended in the vehicle”. However, the definition of a “child safety alarm” refers to “an alarm system that prompts the driver of a child care vehicle to inspect the vehicle for children before exiting the child care vehicle”. [s. 48.658 (1) (c), Stats.] It appears that child care providers are in compliance with the rule if someone other than the driver, including a child, could inspect the vehicle to ensure that no child is left unattended in the vehicle and then turn off the child safety alarm. Is this the department’s intent? A similar comment applies to other providers if those providers have the duty described in comment b., above.

d. In SECTION 10, “(2)” should be inserted after “252.06” in the treatment clause.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. DCF 202.04 (7) (b) 2. d., the “DCF” following “or” should be omitted. [s. 1.07 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The “Explanation of Agency Authority” section contains brackets to explain the statutory authority for promulgating rules regarding child safety alarms. Brackets indicate the changes made in a quote; however, no quotation marks are used to indicate what the quote is. The department should either eliminate the brackets or insert quotation marks to clarify what is being quoted.

b. Throughout the proposed rule, the term “child safety alarm” is undefined. Instead of a definition, when the term is used, it is followed by the phrase “that prompts the driver to inspect the vehicle for children before exiting”. This phrase is part of the statutory definition of “child safety alarm”. The department should consider deleting this phrase and instead define the term “child safety alarm” by referencing s. 48.658 (1) (c), Stats.

c. Throughout the rule, there is a requirement that “[t]he child safety alarm shall be properly maintained and in good working order each time the vehicle is used for transporting children”. What does it mean for a child safety alarm to be “properly maintained and in good working order”? How are child care providers to comply with this requirement?