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Proposed by: DWD
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ANALYSIS OF PROPOSED UI LAW AND ADMINISTRATIVE RULE CHANGE

Department Proposal to Revise Statute and Rules for Registration for Work and Work Search

1. Description of Proposed Change:

Increases the number of work search actions an unemployment insurance claimant must do each week from two to at least four. The amendments to the administrative code simplify and clarify the intent of the administrative code provisions surrounding registration and work search requirements for an unemployment insurance claimant. Also enables the Department to be able to modify work registration and work search requirements as advances in technology make changes possible and necessary.

2. Proposed Statutory and Administrative Rule Language:

Amend Wis. Stat. §108.04(2) to read as follows:

(2) GENERAL QUALIFYING REQUIREMENTS.

(a) Except as provided in par. (b) and sub. (16) (am) and (b) and as otherwise expressly provided, a claimant is eligible for benefits as to any given week only if:

1. The individual is able to work and available for work during that week;
2. As of that week, the individual has registered for work as directed by the department; and
3. The individual conducts a reasonable search for suitable work during that week. The search for suitable work must include 2 at least 4 actions per week that constitute a reasonable search as prescribed by rule of the department. This subdivision does not apply to an individual if the department determines that the individual is currently laid off from employment with an employer but there is a reasonable expectation of reemployment of the individual by that employer. In determining whether the individual has a reasonable expectation of reemployment by an employer, the department shall request the employer to verify the individual's employment status and shall also consider other factors, including:
 - a. The history of layoffs and reemployments by the employer;
 - b. Any information that the employer furnished to the individual or the department concerning the individual's anticipated reemployment date; and
 - c. Whether the individual has recall rights with the employer under the terms of any applicable collective bargaining agreement.

(ae) A claimant is not available for work under par. (a) 1. in any week in which he or she is located in a country other than the United States, as defined in s. 108.02 (15) (do) 2., or Canada for more than 48 hours unless the claimant has authorization to work in that other country and there is a reciprocal agreement concerning the payment of unemployment insurance benefits between that other country and the United States.

(b) The requirements for registration for work and search for work shall be prescribed by rule of the department, and the department may by general rule waive these requirements under certain stated conditions

(c) Each employer shall inform his or her employees of the requirements of this subsection in such reasonable manner as the department may prescribe by rule.

(e) Each claimant shall furnish to the department his or her social security number. If a claimant fails, without good cause, to provide his or her social security number, the claimant is not eligible to receive benefits for the week in which the failure occurs or any subsequent week until the week in which he or she provides the social security number. If the claimant has good cause, he or she is eligible to receive benefits as of the week in which the claimant first files a claim for benefits or first requests the department to reactivate an existing benefit claim.

(f) A claimant is ineligible to receive benefits for any week for which benefits are paid or payable because the claimant knowingly provided the department with a false social security number.

Amend Wis. Admin. Code, chapter DWD 126 to read as follows:

**Chapter DWD 126
WORK REGISTRATION**

DWD 126.001 Definitions.

DWD 126.01 Purpose.

DWD 126.02 Registration.

DWD 126.03 Waiver of work registration requirement.

~~DWD 126.04 Presumption of participation.~~

DWD 126.05 Justifiable cause for failure to participate.

DWD 126.001 Definitions. Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

DWD 126.01 Purpose. Under s. 108.04 (2), Stats., a claimant who is totally unemployed is eligible for unemployment benefits for any week only if the claimant has registered for work, unless the registration requirement has been waived by the department in accordance with this chapter. This chapter specifies what registration is; and when the requirement shall be waived, and when it shall be presumed that the claimant is participating in reemployment services.

DWD 126.02 Registration. ~~(1) Except as provided in sub. (4), a~~ A claimant shall be considered registered for work with respect to any week if he or she has filed files an application to establish a benefit year pursuant to s. DWD 129.02, provided that:

(a) he or she has timely submitted complete information for registration for work to the department's agency for reemployment services in the form and manner and on such computer-based or other systems as the department may prescribe for such purposes; and

(b) if he or she has been referred by the department for reemployment programs or services, he or she has participated in the reemployment programs or services in a timely manner and to the full extent directed by the department unless the department finds that justifiable cause exists under s. DWD 126.05.

(2) The department shall determine the standards for the content of the information required of a claimant for a complete registration and standards for timeliness under this subsection.

~~(2) Except as provided in sub. (4), a claimant shall be considered registered for work if the presumption of participation in reemployment services under s. DWD 126.04 is applicable to him or her.~~

~~(3) A claimant shall be considered registered for work if he or she is enrolled in or otherwise complying with department directions concerning other reemployment programs approved by the department for this purpose, or if the claimant is not complying but has justifiable cause for failure to participate under s. DWD 126.05.~~

~~(4) No claimant may be considered registered for work or eligible for benefits with respect to any week if:~~

~~(a) He or she has been referred for reemployment services; and~~

~~(b) The presumption of participation in reemployment services under s. DWD 126.04 (1) has been determined to be inapplicable under s. DWD 126.04 (3).~~

DWD 126.03 Waiver of work registration requirement.

The department shall waive a claimant's work registration requirement for any week if while one or more of the following circumstances prevail:

(1) The claimant performs at least 20 hours of work for an employer, has been determined, pursuant to a profiling system established by the department, to be unlikely to exhaust regular unemployment compensation benefits and to not need reemployment services in order to make a successful transition to new employment; or

(2) The claimant: is currently laid off from employment with an employer but the employer has verified that there is an expectation of returning to employment within a period of no more than 8 weeks, which may be extended to 12 weeks if verified by the employer.

~~(a) Has been determined, pursuant to a profiling system established by the department, to be likely to exhaust regular unemployment compensation benefits and to need reemployment services in order to make a successful transition to new employment;~~

~~(b) Has been referred during the current benefit year for reemployment services; and~~

~~(c) Has satisfactorily completed such services.~~

(3) The claimant has an expectation of starting employment with an employer within 4 weeks and this has been verified by the employer. The waiver shall not exceed 4 weeks.

(4) The claimant has been laid off from work and routinely obtains work through a union referral or hiring hall process. Waiver under this subsection may be permitted only if:

(a) The union referral or hiring hall process is the primary method by which workers obtain work in the claimant's customary occupation;

(b) The union maintains a record of unemployed members and the referral activities of these members and allows the department to inspect such records;

(c) The union provides, upon the request of a department deputy, any information regarding a claimant's registration or a job opening or referral;

(d) Prospective employers of the claimant seldom place orders with the public employment office for jobs requiring occupational skills similar to those of the claimant;

(e) The claimant is registered for work with his or her union and satisfies the requirements of the union relating to job referral procedures and maintenance of membership in good standing; and

(f) The union enters into a written agreement with the public employment office regarding the requirements of this subsection.

(5) The claimant is summoned to serve as a prospective or impaneled juror.

(6) The claimant is enrolled in and satisfactorily participating in a course of approved training under s. 108.04 (16) or special occupational training under s. 108.04 (16m), Stats.

(7) The claimant is unable to complete registration due to circumstances which the department determines are beyond the claimant's control.

DWD 126.04 Presumption of participation. (1) A claimant who has registered for work under s. DWD 126.02 shall be presumed to be participating in reemployment services, except as provided in sub. (3).

~~(2) Circumstances under which a claimant shall be presumed to be participating in reemployment services include, but are not limited to, the following:~~

- ~~(a) The claimant has filed an application to establish a benefit year pursuant to s. DWD 129.02 but the department has not yet determined, pursuant to a profiling system which it has established, whether or not the claimant is likely to exhaust regular unemployment compensation benefits and to need reemployment services in order to make a successful transition to new employment; or~~
- ~~(b) The claimant has been determined, pursuant to a profiling system established by the department, to be likely to exhaust regular unemployment compensation benefits and to need reemployment services in order to make a successful transition to new employment, and:~~

~~1. The claimant has not been referred for reemployment services;~~

~~or~~

~~2. The claimant has been referred for reemployment services and:~~

~~a. Is participating by complying with department directions regarding such services;~~

~~b. Is not participating because he or she has justifiable cause for failure to participate in such services under s. DWD 126.05;~~

~~or~~

~~c. Has elected not to enroll in educational and training programs which were recommended based on a reemployment services assessment, but has been referred for additional reemployment services and is participating by complying with department directions regarding such services.~~

~~(3) The department shall determine that the presumption of participation under sub. (1) does not apply if the claimant has failed to participate in reemployment services without justifiable cause under s. DWD 126.05. Circumstances which the department shall consider as overcoming the presumption of participation under s. DWD 126.04 (1), unless justifiable cause under s. DWD 126.05 exists, include but are not limited to the following:~~

~~(a) The claimant's failure to provide information requested by the department for use in its profiling system;~~

~~(b) The claimant's failure to attend a reemployment services orientation meeting for which he or she was scheduled;~~

~~(c) The claimant's failure to attend a reemployment services assessment or testing appointment for which he or she was scheduled; or~~

~~(d) The claimant's failure to attend a job search or other reemployment services workshop for which he or she was scheduled.~~

DWD 126.05 Justifiable cause for failure to participate.

The department may find that a claimant has justifiable cause for failing to participate in reemployment services or other department approved reemployment programs in any week. Justifiable cause includes, but is not limited to, the following:

- (1) The claimant is summoned to serve as a prospective or impaneled juror;
- (2) The claimant is enrolled and satisfactorily participating in a course of training approved by the department;
- (3) The claimant is unable to participate because the claimant is employed;
- (4) The claimant is unable to participate because of a job interview; or
- (5) The claimant is unable to participate due to circumstances which the department determines are beyond the claimant's control.

Amend Wis. Admin. Code, chapter DWD 127 to read as follows:

**Chapter DWD 127
WORK SEARCH**

DWD 127.001 Definitions.

DWD 127.01 Work search; policy; requirements.

DWD 127.02 Waiver of work search requirements.

DWD 127.04 Claimants to present evidence of work search efforts.

DWD 127.05 Certification as to work search.

DWD 127.06 Added efforts to secure work.

DWD 127.07 Employment workshops.

~~DWD 127.08 Further disqualifications; retroactivity.~~

DWD 127.001 Definitions. Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

DWD 127.01 Work search; policy; requirements.

(1) Under s. 108.04 (2), Stats., a claimant shall be eligible for unemployment benefits for any week only when the department finds, among other things, that the claimant has within that week made a reasonable search for suitable work. The search for suitable work shall include at least 2-4 actions by the claimant each week that are reasonably designed to secure work. The Department may require a claimant to provide the Department with proof, such as submitting a job search log, that he or she has conducted at least four actions that are reasonably

designed to secure work. Mere registration for work under ch. DWD 126 does not establish that the claimant is making a reasonable search for suitable work. It is essential that the claimant personally and diligently search for work on his or her own behalf. The reasonableness of a search for work will, in part, depend on the employment opportunities in the claimant's labor market area. A work search which may be appropriate in a labor market area with limited opportunities may be totally unacceptable in an area with greater opportunities. Unreasonable limitations by a claimant as to salary, hours or conditions of work indicate that a claimant is not making a reasonable search for suitable work. The department expects each claimant to conduct himself or herself as would a prudent person who is out of work and seeking work.

(2) The department shall consider the following actions to constitute a reasonable search for suitable work under the facts and circumstances of each claimant's situation:

(a) Making applications Applying for work with employers who may reasonably be expected to have openings for suitable work, except that applications submitted to the same employer more than once in a 4-week period are not credited as a search action unless a new job is available or posted or the employer's customary practices or circumstances encourage the submission of such applications.

~~(b) Applying for work with former employers; however, a claimant may refuse to apply for work with an employer if the claimant previously terminated employment with the same employer with good cause attributable to the employer under s. 108.04 (7) (b), Stats.~~

~~(c) Making applications or (b) Taking examinations for suitable work in the civil service of a governmental unit;~~

~~(dc) Registering for suitable work with a public or private placement facility, including a union referral or hiring hall; and complying with the various union registration requirements and job referral procedures;~~

~~(ed) Registering with a placement facility of the claimant's professional organization; Visiting a Wisconsin Job Service center or career center in another jurisdiction and following the recommendations of the center staff, including participation in reemployment programs and services to the full extent directed by the center.~~

(d) Other actions the department may determine as constituting reasonable job search efforts.

~~(f) Registering with a placement facility of a school, college or university if one is available to the claimant in his or her occupation or profession;~~

~~(g) Responding to classified advertisements for suitable work;~~

~~(h) Registering with a private employment agency or an employer's placement facility; however, no claimant may be denied benefits solely on the ground that he or she has failed or refused to register with a private employment agency or any other placement facility which charges a fee for its services;~~

- (i) ~~Participating in employment workshops which offer instruction in improving the claimant's skills for finding and obtaining employment; or~~
- (j) ~~Performing any other reasonable action which the department finds to constitute an effective means of searching for suitable work.~~

(3) A claimant shall be ineligible for benefits in any week in which the department determines that the claimant's search for suitable work was not reasonable under the requirements of this section unless the search has been waived by the department.

DWD 127.02 Waiver of work search requirements.

The department shall waive a claimant's work search for suitable work requirement under s. DWD 127.04 for any week under any while one or more of the following circumstances prevail:

(1) The claimant performs any at least 20 hours of work for his or her customary an employer in that week.

(2) The claimant is currently laid off from employment with an employer but the employer has verified there is an a reasonable expectation of returning to reemployment of the claimant by that employer within a period of no more than 8 weeks, which may be extended to 12 weeks if verified by the employer. In determining whether the claimant has a reasonable expectation of reemployment by the employer, the department shall request the employer to verify the claimant's employment status and shall also consider other factors, including the following:

- (a) ~~The history of layoffs and reemployments by the employer.~~
- (b) ~~Any information that the employer furnished to the individual or the department concerning the claimant's anticipated reemployment date.~~
- (c) ~~Whether the claimant has recall rights with the employer under the terms of any applicable collective bargaining agreement.~~

(3) The claimant has a reasonable an expectation of starting employment work with a new an employer within 4 weeks and this has been verified by the employer. The waiver shall not exceed 4 weeks. of the week in which waiver is being considered. In determining whether a claimant has a reasonable expectation of starting work with a new employer, the department shall consider factors including, but not limited to, the following:

- (a) ~~The hiring practices of employers in the claimant's labor market area for workers who perform work which is similar to the work which the claimant is expected to perform for the new employer;~~
- (b) ~~Any information which the new employer furnished to the claimant or the department about the time within which the work is expected to commence; and~~
- (c) ~~Whether the work is suitable work for the claimant.~~

(4) The claimant has been laid off from work and routinely obtains work through a union referral or hiring hall process. Waiver under this subsection may be permitted only if:

- (a) The union referral or hiring hall process is the primary method by which workers obtain work in the claimant's customary occupation;
- (b) The union maintains a record of unemployed members and the referral activities of these members and allows the department to inspect such records;
- (c) The union provides, upon the request of a department deputy, any information regarding a claimant's registration or a job opening or referral;
- (d) Prospective employers of the claimant seldom place orders with the public employment office for jobs requiring occupational skills similar to those of the claimant;
- (e) The claimant is registered for work with his or her union and satisfies the requirements of the union relating to job referral procedures and maintenance of membership in good standing; and
- (f) The union enters into a written agreement with the public employment office regarding the requirements of this subsection.

~~**(5)** During any calendar week in which any of the following days fall:~~

- ~~(a) January 1;~~
- ~~(b) The fourth Thursday in November; and~~
- ~~(c) December 25.~~

~~**(6)** **(5)** The claimant is summoned to serve as a prospective or impaneled juror.~~

~~**(7)** **(6)** The claimant is enrolled in and satisfactorily participating in a course of approved training under s. 108.04 (16), or special occupational training under s. 108.04 (16m), Stats.~~

~~**(8)** **(7)** The claimant has not made a search for suitable work because of an error made by personnel of the department.~~

~~**(9)** The claimant was not aware of the work search requirement and the claimant's most recent employer failed to post and maintain the notice on claiming unemployment benefits that was supplied to the employer under s. DWD 120.01.~~

~~**(10)** The claimant reasonably expected to perform work during the week but did not receive timely notice from the employer that work would not be available so as to allow the claimant sufficient time to comply with the search for suitable work requirement in that week.~~

~~**(11)** **(8)** The claimant has been determined, pursuant to a profiling system established by the department, to be likely to exhaust regular unemployment~~

~~insurance benefits and to need referred for~~ reemployment programs or services in order to make a successful transition to new employment, and

- ~~(a) The claimant has been referred for and is participating in reemployment services by complying with department directions regarding such services;~~
- ~~(b) The claimant has been referred for reemployment services and is enrolled and satisfactorily participating in educational and training programs which were recommended based on a reemployment services assessment; or~~
- ~~(d) The claimant has been referred for reemployment services and is not participating in such services, but has justifiable cause for his or her failure to participate. Justifiable cause includes, but is not limited to, the following:~~
 - ~~(a) The claimant is summoned to serve as a prospective or impaneled juror;~~
 - ~~(b) The claimant is enrolled and satisfactorily participating in a course of training approved by the department;~~
 - ~~(c) The claimant is unable to participate because the claimant is employed;~~
 - ~~(d) The claimant is unable to participate because of a job interview; or~~
 - ~~(e) The claimant is unable to participate due to circumstances which the department determines are beyond the claimant's control.~~

(9) If the state enacts a self-employment assistance program or other federally authorized program pursuant to the federal statutes that provides for waiver of work search requirements and the claimant is participating in the program.

DWD 127.04 Claimants to present evidence of work search efforts. (1) ~~The department may require a claimant shall retain~~ evidence of his or her work search efforts ~~to the department for 52 weeks following the week in which the work search occurred and, when directed by the department, submit the evidence to the department in the form and manner and on such computer-based or other systems as any time period up to and including the 8-week period prior to the date that the department may prescribe for such purposes.~~ makes the request. The department may also notify the claimant that evidence will be required for a future week. The department may verify the evidence submitted. Evidence which a the claimant customarily would be expected to must retain and submit includes the following:

- ~~(a) In the case of employer contacts~~ Applications for work: the date on which the claimant made an employer contact; the name and address of the employer and the name of the employer representative contacted; the type of work applied for; the method used to contact the employer; and the results of the contact;
- ~~(b) In the case of eCivil service examinations:~~ the date on which the claimant took an examination and the type of work applied for; position for which the examination was taken;
- ~~(c) In the case of registration with a union referral or Union hiring hall and placement facilities:~~ professional organization or educational placement facility or private employment agency: the date on which the claimant registered and the

name and address of the facility; type of work for which the claimant is registered; and

(d) Evidence of any other action which the claimant took during a given week to seek work including, but not limited to, any responses to advertisements for suitable work and submission of personal resumes to prospective employers

Visits to a Job Service office or career center: the date of the visit, the name and address of the one-stop center and the name of the person with whom the claimant met; and,

(e) If approved by the Department, any other types of work search activity that is reasonably expected to result in the claimant becoming employed.

(2) The department may disqualify a claimant for benefits ~~in~~ for any week ~~for~~ in which the claimant fails to provide satisfactory evidence of work search efforts is insufficient to establish that the claimant made a reasonable search for suitable work actions when required.

(3) The department may conduct audits of work searches.

DWD 127.05 Certification as to work search. The department may require any claimant to certify that a work search was made each week as part of the claim filing procedure under ch. DWD 129.

DWD 127.06 Added efforts to secure work. (1) The department may require any claimant whose employment history or conduct indicates that he or she may not be genuinely interested in accepting new work to make a minimum number of weekly in-person applications for work with employers and may also require the claimant to comply with any of the provisions under s. DWD 127.01 (2). The department shall provide each claimant with instructions as to how to comply with the requirements under this section. A claimant shall be ineligible for benefits for any week in which the claimant has failed, without good cause, to comply with any requirements imposed by the department under this subsection.

(2) (a) After a claimant has been unemployed for 4 or more consecutive weeks, the department may require the claimant to develop a work search plan for approval by the department. A claimant shall be ineligible for benefits in any week in which the department determines that the claimant failed, without good cause, either to develop or comply with the work search plan.

(b) After a claimant has been unemployed for 4 or more consecutive weeks, the department may require the claimant to conduct additional work search actions as directed by the Department. A claimant shall be ineligible for benefits in any week in which the department determines that the claimant failed, without good cause, to conduct the additional work search actions.

(3) A claimant who is claiming extended benefits under s. 108.141, Stats., shall, in addition to complying with the requirements for extended benefits, comply with

any requirements imposed by the department under subs. (1) and (2). A claimant who fails to comply with the requirements under this subsection shall be ineligible for benefits until the claimant has again worked within at least 4 10 subsequent weeks and earned wages equal to at least 4 10 times his or her extended weekly benefit rate.

DWD 127.07 Employment workshops. (1) The department may require a claimant to participate in a public employment office workshop which offers instruction in improving the claimant's skills for finding and obtaining employment. The claimant shall be ineligible for benefits for any week for which the department determines that the claimant failed, without good cause, to participate in such a workshop.

- (2) A claimant may not be disqualified from benefits under this section if:
- (a) The claimant is required to pay a participation fee of any kind for the workshop; or
 - (b) The workshop is more than 5 days in duration.

~~**DWD 127.08 Further disqualifications; retroactivity. (1)** A claimant shall be ineligible for benefits in any week for which the claimant knowingly makes a false statement or conceals or misrepresents any information pertaining to his or her work search efforts.~~

~~(2) The department may not disqualify a claimant under ss. DWD 127.01 and 127.04 for any week for which a benefit check has been mailed prior to the date of an initial determination resolving an eligibility issue under the aforementioned sections. The department may disqualify a claimant under ss. DWD 127.05, 127.06 and 127.07 and sub. (1) whether or not a benefit check has been mailed for a given week.~~

3. Proposer's Reason for the Change

As the Department of Labor's Comparison of State UI Laws finds: "[i]n addition to registration for work at a local employment office, all states... , whether by law or practice, require that a worker be actively seeking work or making a reasonable effort to obtain work." Actively seeking work should be the main job of those individuals who are unemployed and collecting benefits. This proposal will provide an incentive for individuals who are unemployed to more actively seek out employment and thereby improve their employment prospects. This proposal will also strengthen the unemployment insurance safety net by helping to alleviate the concern of the employer community and general public that the unemployment insurance program is being abused by some unemployment insurance recipients.

4. Brief History and Background of Current Provision

Prior to January 2, 2000 the law simply said the claimants were required to for work. The number of efforts or contacts was not specified so the Department required "at least one". Legislation was passed requiring 2 contacts beginning January 2, 2000 with a sunset of December 28, 2002 at which time the Department reverted back to the prior requirement of "at least one" job search.

Subsequently, in 2003 a compromise was agreed between the labor and management side that resulted in placing back the requirement that claimants perform two search actions for suitable work each week.

5. Effects of Proposed Change

- a. Policy. Proposals would streamline ability of department to ensure that individuals receiving unemployment insurance benefits are actively seeking work to become reemployed. Proposal would also accomplish objective of department of ensuring that those receiving unemployment insurance are engaging in activities that an unemployed person who wants to work would normally do.
- b. Administrative Impact.
- c. Equitable. Unemployment benefits are meant to act as a temporary safety net for employees who are out of work through no fault of their own -- to tide them over until they can find a new job. Increasing the work registration and work search requirements that an unemployment insurance recipient must do will facilitate the goal of the unemployment insurance program that it is meant to only be a temporary safety net for those who truly cannot find work after losing a job.
- d. Fiscal. TBD. Will likely decrease charges to the trust fund by disqualifying some individuals who are not actively seeking work and lessen the amount of time that some individuals remain on the unemployment insurance program and thereby decrease unemployment claims. Yet, without a verification component to this increased requirements placed on recipients, the impact will be minimized.

6. State and Federal Issues

- a. Chapter 108. Besides the amendments to Wisconsin Statute § 108.04, there are no required amendments to other sections of Chapter 108.
- b. Rules. Besides the amendments to DWD Chapter 126 and 127, there are no required amendments to other sections of the administrative rules.

- c. Conformity. In addition to registration for work at a local employment office, all states, whether by law or practice, require that an individual be actively seeking work or making a reasonable effort to obtain work. The *Middle Class Tax Relief and Job Creation Act of 2012* (Pub. L. 112-96) added an explicit statutory requirement to Federal law that individuals must be able to work, available for work, and actively seeking work to be eligible for regular unemployment compensation. These amendments by increasing the number of required work search activities and strengthening the ability of the department to monitor claimants' efforts to obtain employment strengthens the ability of Wisconsin to conform to these federal requirements.

7. Proposed Effective/Applicability Date

The law change should be operative as of the effective date of the legislation. The administrative code provision changes should be done as quickly as possible under the statutory framework to amend the administrative code.