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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 97-092

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. It appears that most, if not all, of the rule is a mere repetition of the statutory provisions in ss. 301.45 and 301.46, Stats. The purpose of administrative rules is to supplement, implement or interpret legislation and unnecessary repetition of statutory language should be avoided. In addition, instead of mirroring the statutory language, which is drafted clearly and precisely, the rule, in many places, attempts to paraphrase the statutory language, a practice which, in rule drafting in general, often leads to unintended conflicts with a statutory provision or ambiguity as to the meaning of a statutory provision. For example, see s. DOC 332.04.

The department should redraft the rule to include only those provisions which supplement, implement or interpret ss. 301.45 and 301.46, Stats., and include statutory language only where necessary to convey the intent of the rule. If the department does include statutory language, that language should be, to the fullest extent possible, reflective of the statutory language and not a paraphrase of it.

If it is not necessary to reiterate statutory language or requirements, the department should not do so since the current statutes already clearly set forth most of the registration and notification provisions. The rule should deal only with those provisions which need interpretation or clarification.

b. “The new chapter does not have a title. SECTION 1 should begin as follows:

“SECTION 1. Chapter DOC 332 is created to read:

SEX OFFENDER REGISTRATION AND
COMMUNITY NOTIFICATION REQUIREMENTS”

c. In s. DOC 332.01, “These rules interpret” should be “This chapter interprets.”

d. Section DOC 332.02 should begin, “Unless otherwise indicated, in this chapter:”. The “Unless otherwise indicated” language takes care of those provisions, for example, in which “Department” does not mean the Department of Corrections. Also, “in this chapter” is necessary in order to state the applicability of the definitions. In all of the definitions of terms with two or more words, only the first word should be capitalized (e.g., “Agency with jurisdiction” and not “Agency with Jurisdiction”). The definition of “Comparable law” in sub. (2) does not add anything of substance to the meaning of that term that is not already evident whenever “comparable to” language is used in the rule; this definition should be deleted or, if the department thinks it is necessary to a better understanding of the “comparable to” provisions in the rule, the definition should be revised to actually do that.

The definition of “Included offense” should be deleted. This provision, which merely repeats the statutory language, should be in a substantive provision immediately after the definition section (i.e., either the way it is done in the statutes or just by cross-referencing the statutory provisions in that substantive provision). Also, the choice of “included offense” as the defined term is inappropriate since “included offense” has its own meaning in substantive criminal law and procedure. If the department decides to define the term, the term should be given a name other than “included offense.”

In sub. (4) (a) and elsewhere in the rule, a comma should be placed before “Stats.” in all the references to the statutes. Also, where a list of statutes is an “or” list (e.g., “s. 940.30 or 940.31, Stats.”), “s.”, not “ss.”, should be used. The department should check through the entire rule to make these changes where necessary.

In sub. (4) (h), “this section” should be “s. 301.45, Stats.” and “(b) 2” should be “(b) 2.”

In sub. (5), where does the definition of “Residence” come from? This appears to be the department’s interpretation of the phrase “The address at which the person is or will be residing” in s. 301.44 (2) (a) 5., Stats. It would be helpful if this were explained in a note to this definition (immediately after it in the rule) or in the analysis to the rule. Also, should “will be residing” be inserted after “is residing” since some of the statutory provisions refer to “The address at which the person is or will be residing” (see, e.g., the provision cited above).

e. In s. DOC 332.03, “this section” should be replaced by a cross-reference to the specific rule provision setting forth the “registration requirements” that are referred to.

f. In s. DOC 332.06 (1) (a), and elsewhere in the rule, reference is made to “in a form and manner provided by the department.” It appears that in most instances where this language appears, the rule should set forth the form and manner itself. Also, since the rule requires new or revised forms, reference to the forms should be included in notes to provisions of the rule that the forms are applicable to. [See s. 1.09 (2), Manual.] The Manual specifies that a copy of the form “shall be attached to the rule or a statement shall be included indicating where a copy of the form may be obtained at not charge.” The department has included the new or revised forms, but no references are made to these forms in notes in the rule.

- g. In s. DOC 332.06 (8), “District Attorney” should not be capitalized.
- h. In s. DOC 332.13 (1), a comma should be inserted after “in sub. (2).”
- i. In s. DOC 332.14, “effected” should be “affected.”
- j. Although the heading “EFFECTIVE DATE” appears at the end of the rule, no effective date is specified.

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

In s. DOC 332.07 (1) (a), it is not clear why the paragraph cites only s. DOC 332.04 (2) (a) to (i), but not par. (j). Is it intended that the information in par. (j) be covered by s. DOC 332.07 (1) (b)? This should be clarified. Also, “, through” should be replaced by “to.”