



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-090

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 January 2005.]

2. Form, Style and Placement in Administrative Code

a. The agency should review the format of the rule to assume compliance with drafting guidelines. Specifically, attention needs to be given to making sure the subsection language is in agreement with the introduction clauses. For example, s. Adm 10.035 (1) (intro.) states that “cost benefit analysis statements shall include the following:”, but sub. (1) (a) reads: “Provide a justification...” More appropriately, sub. (1) (a) should begin with “A justification...” and sub. (1) (b) should begin with “A list and description of...” Similar changes are needed throughout the rule.

Section Adm 10.035 (intro.) is improperly drafted as introductory material since it does not end in a colon and lead into the subsections that follow. [See s. 1.03 (8), Manual.] It should be numbered as sub. (1) and the following subsections should be subs. (2) to (6). They should all be drafted as complete sentences; for example, sub. (3) should begin “A cost-benefit analysis shall provide....”

b. In s. Adm 10.035 (2), the second sentence would be clearer if rewritten to state: “For services expected to cost more than \$25,000 annually, an agency shall provide a detailed cost-benefit analysis showing that the proposed service can be performed....” [Emphasis added.]

c. In s. Adm 10.035 (2), “will” and “must” should be changed to “shall.”

d. The paragraph titles in subs. (4) and (5) should be italicized. [See s. 1.05 (2) (d), Manual.]

- e. In s. Adm 10.035 (5) (b), the word “it” should be deleted.
- f. Section Adm 10.38 should be drafted in the active voice so that it is clear who must submit the analysis.
- g. The treatment clause of SECTION 2 indicates s. Adm 10.039 is created, but it does not appear to be part of the submitted rule.

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

The agency may wish to provide a more complete reference to the State Procurement Manual, including information on obtaining a copy in a note to follow s. Adm 10.035 (2).

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

- a. Generally, “cost-benefit” is hyphenated in the rule, but in some provisions it is not hyphenated. Consistent punctuation should be used in all provisions.
- b. The rule is not clear concerning the \$25,000 threshold for contracts. Specifically, in s. Adm 10.035 (1), reference is made to “proposed contractual service procurement involving an estimated expenditure of more than \$25,000”; in s. Adm 10.035 (2) reference is made to “services expected to cost more than \$25,000 annually.” Consistent language should be used.
- c. The agency may wish to review the proposed rules (Clearinghouse Rule 06-077) of the Department of Transportation (DOT) that have been developed to comply with 2005 Wisconsin Act 89 with regard to procurements by DOT. The DOT rule uses a different format, includes numerous definitions, somewhat different requirements and a provision related to access to contractual information.
- d. The agency, for clarity purposes, may wish to include an initial applicability section in the final rule so that it is clear when the requirements will first apply.