

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 96-105

### 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. Because the first four SECTIONS of the rule all amend s. DOC 325.01, only one treatment clause is needed. Similarly, because SECTIONS 4 and 5 of the rule create paragraphs within the same subsection of the rule, one treatment clause is all that is required. [See s. 1.04, Manual.] In any event, the rule contains two provisions numbered as SECTION 2. The rule’s numbering should be reviewed after any consolidation of SECTIONS takes place.

b. In s. DOC 325.01 (1) (intro.), the title of the section should be shown even if it is not amended. [See s. 1.05 (3) (d), Manual.] The entire rule should be reviewed for correct use of titles.

c. Because SECTIONS 8 and 9 of the rule effectively repeal and recreate s. DOC 325.03 (3), they can be combined with SECTION 7 of the rule. Thus, the treatment clause would read: “SECTION \_. DOC 325.03 (1) and (3) are repealed and recreated to read:”.

d. In s. DOC 325.03 (3), the symbol “ch.” should be inserted before the reference to “DOC 302”.

e. SECTIONS 12 and 13 of the rule can be combined. The treatment clause would read: “SECTION \_. DOC 325.06 is amended to read:”. The substantive provision would then read: “DOC **325.06** (title) **Approval by warden**. Only a....”

f. In SECTION 14 of the rule, because the treatment clause indicates that the entirety of s. DOC 325.07 is being amended, it is not necessary to repeat “DOC 325.07” prior to the amendment to sub. (2). The entire rule should be reviewed for this incorrect usage.

- g. In s. DOC 325.07 (2) (d), the phrase “are to” should be replaced by the word “shall”.
- h. In s. DOC 325.08 (1) (intro.) and (2) (intro.), the phrase “do any of the following” should be inserted immediately before the colon.
- i. In the treatment clause of SECTION 16, the second reference to “325.09 (1)” and the third reference to “325.09” should be deleted.
- j. Because the Notes to ch. DOC 325 are located in the Appendix to ch. DOC 325, the rule ought to make some sort of reference to that fact in the treatment clause of the provisions. In addition, to the extent possible, the amendments to the Notes ought to conform to standard drafting techniques for amendments to other parts of the rule. For example, the treatment clause could be written in substantially the following form: “SECTION \_. Appendix DOC 325.01 (Note) is amended as follows:”. In addition, where appropriate, a comma should be inserted between the reference to the amended sentence and the amended paragraph. For example, “Amend sentence 2, paragraph 1 to read:”. Finally, the relating clause of the rule should make reference to the fact that various Notes in the Appendix are being amended.

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

- a. The cross-reference to s. DOC 302.05 in s. DOC 325.07 (2) (d) seems somewhat odd. Is it the rule’s intent to require the additional conditions placed on a temporary release to comply with the entire assessment and evaluation process described in s. DOC 302.05? Perhaps a more narrow cross-reference is necessary.
- b. Section DOC 325.09 (2) requires the institution to retain a copy of the release order “per department regulations.” What regulations are being referred to? Can a cross-reference to an Administrative Code provision be provided?

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

- a. The Notes to s. DOC 325.01 indicate that the temporary release must be consistent with preserving order and protecting the public. Thus, the word “should” in s. DOC 325.01 (2) should be replaced by the word “shall”.
- b. In s. DOC 325.03 (4), who designates the “designee”? Is the designee a person designated by the warden or by some other individual? This should be clarified. In addition, because the definition of “warden” includes a “designee”, the designee may specify the level of supervision as provided in s. DOC 325.04, may delegate the authority to order a temporary release of an inmate under s. DOC 325.06 (intro.) and may exercise other powers specified in the rule. Is it intended that the designee have these powers as well?
- c. Section DOC 325.06 provides that only a warden may order the temporary release of an inmate. That section also provides, however, that the authority to order such release may be delegated. Is the person to whom this authority has been delegated the “designee” under s. DOC 325.03 (4)? This should be clarified. In addition, see comment b, above.

d. In s. DOC 325.13 (2), the phrase “should” should be replaced by the word “shall”, unless the state mileage rates are not mandatory, in which case “may” should be used. In addition, the reference to “current rates” should be clarified by instead referring to “the rates in effect at the time of the release”. [See s. 1.01 (9) (b), Manual.] Also, why are the cross-references amended in this provision?

e. The reference to sentence 1, paragraph 1, in the amendment to the Note to s. DOC 325.01 should be to sentence 2, paragraph 1.

f. In the amendment to the second sentence of the Note to s. DOC 325.08, “~~the 2~~” should not be stricken. The amendment to sentence 5 of that same Note also ought to contain a reference to paragraph 1.

g. In the amendment to the second sentence of paragraph 1 of the Note to s. DOC 325.12, the rule should reflect the amendment being made twice in the same sentence.