



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-110

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 2002.]

2. Form, Style and Placement in Administrative Code

a. The department should review the enclosed letter to agencies from the Rules Clearinghouse, dated April 13, 2004, that lists headings to be used in a rule analysis in order to comply with the statutes, as affected by 2003 Wisconsin Acts 118 and 145.

b. The title of ch. RL 150 should be revised to delete “, INTENT” since the chapter does not deal with intent.

c. In s. RL 151.02 (11), the “or” after “(7)” should be renumbered. This will conform the rule text with the statutory provision. Given the extensive reliance on statutory language in the rule, it is important to assure that the rule is in agreement with the statutes.

d. In s. 151.04 (2), “in this chapter” should replace “herein.”

e. The rule proposes to “reserve” s. RL 152.02. This is not appropriate drafting form: the agency can choose not to have any provision numbered “RL 152.02,” but it does not need to be “reserved.” It is not clear why the agency is recommending a specific initial certificate fee in s. RL 151.03, but not a renewal fee in ch. RL 152. The agency may wish to include its reasons in the rule analysis.

f. Several prohibitions in the rule use the term “shall not”; the appropriate term is “may not.” [See s. 1.01 (2), Manual.] For example, see ss. RL 153.05 and 153.06.

g. In s. RL 154.01 (intro.), “following” should replace “same.”

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

The department should carefully review the list of statutes authorizing promulgation in the analysis and in s. RL 150.01. While some of these statutes authorize rule promulgation, some do not and should not be listed. For examples of the latter type of statute, see ss. 440.991 and 440.9925. The entire list should be reviewed. Also, it appears that “440.915” should be “440.9915.”

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

a. The law is somewhat unclear in the definition of an “athletic director” and the rule does not provide any additional clarity. For example, it is not clear whether the references are to an intercollegiate or high school “athletic director.” Since reporting requirements for both the athlete and the agent are central to the regulatory aspect of the rule, it would be helpful to clarify this part of the rule.

b. Section RL 151.05 (1) requires the issuance of a temporary registration if certain specified conditions are met. However, the statutes, in s. 440.993, provides that the agency “may” issue a temporary certificate. In order to be consistent in language, the agency may wish to change the “shall” to “may” in s. 151.05 (1) (intro.). As an alternative, the agency may wish to provide a “catch-all” provision to allow denial for reasonable circumstances, similar to those contained in s. RL 151.06, relating to denials of regular certificates.

c. In s. RL 153.02, mention could be made to the requirement on the agent to also provide notice that a contract has been executed.

d. In s. RL 154.01 (8), the rule refers to a registration or license that is “limited” in “this or any other state.” The term “limited” is not used in 2003 Act 150, the basis for the rule, and may not be appropriate in this context, even though the term is used in ch. 440, Stats. For example, a limitation may be for a very narrow purpose that would not necessarily justify a finding of “unprofessional conduct.”

e. The agency may wish to consider inclusion of an “initial applicability” section to clarify the intended application of the rule. [See, s. 1.02 (3m), Manual.]