



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 09-101

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. The rule should be reviewed to assure consistent use and citation of titles. [See s. 1.05, Manual.] For example, SECTION 5 should show “HA 2.05 (6)” rather than only “(6)” as the amended subsection on page 5.

b. The rule only needs to indicate the provisions being amended, not the entire section or subsection. See, for example, s. HA 2.05 (6), where only par. (a) is amended, but the entire subsection is shown. See, also s. HA 2.05 (7) and (8).

c. The rule preface should conclude with a statement describing where comments concerning the rule are to be submitted and the deadline for submission of the comments. [See s. 1.02 (2) (a), Manual.]

d. In s. HA 2.03 (2), “these rules” should be replaced by the phrase “this chapter.”

e. Section HA 2.05 (1) (d) and (3) could be redrafted to refer to “any of the following” items and eliminate semicolons and use of “and” after the next-to-last item in the list.

f. In s. HA 2.05 (1) (f) 2., the underscored material should follow the material that is stricken through.

g. In s. HA 2.06 (3) (b) 1., the notation “~~w~~Whether” should be replaced by the phrase “~~whether~~ Whether.”

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

- a. In the rule preface statement of statutes interpreted, it appears that the reference to “973.115 (2)” should be replaced by a reference to “973.155 (2).”
- b. In the rule preface explanation of agency authority, all of the statutory references should include the notation “, Stats.,”.
- c. In the rule preface plain language analysis, the reference in SECTION 2 should read: “s. 301.045, Stats.”
- d. In s. HA 2.05 (1) (f) 2., the reference to “statute” should be either specific or be in the plural, “statutes.”
- e. In s. HA 2.05 (7) (a), the text should begin with “(a),” not “a).”

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

- a. In the rule preface explanation of agency authority, each occurrence of the word “allow” should be replaced by the word “allows” and, unless beginning a sentence, the word “Section” should be replaced by the notation “s.”
- b. In the rule preface plain language analysis, the first comma in Section 1 should be replaced by the phrase “or by.” In the first sentence of Section 2, a comma should be inserted after the word “corrections.” In Section 5, the word “do” in the third sentence should be replaced by the word “does.”
- c. In the fiscal estimate, the phrase “an administrative law judge were” should be inserted after the word “if.”
- d. Under the amended version of s. HA 2.04, it is not clear what procedural standards would apply to the issuance of a subpoena by the Secretary of Corrections or a designee. Is it intended that s. 805.07 (1), Stats., apply? Also, a comma should be inserted after the first occurrence of the word “corrections.”
- e. In s. HA 2.05 (1) (d), it would be advisable to refer to a list of “potential evidence and potential witnesses” if “potential” is intended to modify both terms.
- f. Should s. HA 2.05 (1) (f) and (7) (e) contain a specific citation to any rule or statute for the calculation of good time forfeiture and the period of reincarceration or reconfinement? If a specific reference is not appropriate, then the agency may wish to make a general reference to relevant guidelines or applicable standards of the department.
- g. Under s. HA 2.05 (3) (a), it is not clear who determines whether a client attends the hearing in person or by electronic means. This should be clarified in the final rule.
- h. Under s. HA 2.05 (6), it is not clear whether an administrative law judge has authority to conduct a telephone conference if all the parties do not agree. This should be clarified. Also, who determines whether the hearing is conducted by video conference? As

drafted, it appears that the administrative law judge would make that determination. The agency should clarify this aspect of the rule, and also assure it is consistent with the changes proposed in s. HA 2.06 (2).

i. In s. HA 2.06 (1), the underscored comma should be replaced by the word “and.”

j. The time references throughout the rule to “days” are assumed to be “calendar” days and not “working” days. If this is not intended, the rule should be amended to correct that conclusion.

k. The agency may wish to include an “initial applicability” provision to specify which cases or hearing will be subject to the revised rule.