



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 15-004

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 December 2014.]

1. Statutory Authority

In the rule summary, the agency should describe its authority to provide grants for expenses that arise in *any* 12-month period. Section 250.21 (2), Stats., refers to amounts paid “during the year”, which could be interpreted to refer to the state fiscal year.

2. Form, Style and Placement in Administrative Code

a. In the explanation of agency authority, the agency should include the text of s. 227.11 (2) (a) 2. and 3., Stats., in its description of s. 227.11 (2) (a), Stats.

b. SECTIONS 1 and 2 should be combined into a single SECTION with the following treatment clause: “Chapter DHS 150 is created to read:”. [s. 1.055, Manual.]

c. The title of ch. DHS 150 should be written in solid capital letters. [s. 1.05 (2) (a), Manual.]

d. In s. DHS 150.04 (1), certain provisions should be modified and renumbered to ensure that subunits form complete sentences when read in conjunction with the introductory text. Specifically, in s. DHS 150.04 (1) (b) 2., the phrase “the department shall” should be deleted. [s. 1.03 (3), Manual.] In addition, s. DHS 150.04 (1) (b) 1. should be numbered s. DHS 150.04 (1) (b), and s. DHS 150.04 (1) (b) 2. should be numbered s. DHS 150.04 (1) (c).

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

a. In s. DHS 150.04 (1) (a), it appears the agency should refer to par. (b) 1. in addition to the cross-reference to s. DHS 150.04 (2).

b. The agency may wish to more fully describe the contents of its application form within the text of ch. DHS 150.

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

a. In the description of Michigan law in the comparison with rules in adjacent states, “Iowa” should be replaced with “Michigan”.

b. In s. DHS 150.01, “its” should be replaced with “their”.

c. In s. DHS 150.02 (1), the agency defines “allowable costs”. The agency should consider providing more detail about what constitutes an “allowable cost”. For example, if an existing employee begins to spend four hours per week to answer questions about a workplace wellness program, does 10% of that employee’s salary, assuming a 40-hour work week, count as an “allowable cost”? If costs recur on an annual basis, may a grant be awarded for costs that are incurred in one year that relate to provision of a program in a later year?

d. In s. DHS 150.02 (1) and (10), the definitions of “allowable costs” and “workplace wellness program grant” appear to contain substantive material that should be included in the text of the proposed rule, rather than in a definition. [s. 1.01 (7) (b), Manual.]

e. In s. DHS 150.02 (3), “complete application” is defined as “all of the required questions on the application form are answered”. However, the use of “complete application” in s. DHS 150.04 (1) (a) appears to include more than the application form. Under the paragraph, the agency must issue a grant after receiving a “complete application” under s. DHS 150.03 (2). Section DHS 150.03 (2) requires an application to submit the application form, an itemized list of costs, and, if requested, a receipt for the costs. Similarly, the use of “completed application” in s. DHS 150.04 (1) (b) 2. (intro.) appears to have the same meaning as “complete application” in s. DHS 150.04 (1) (a). Therefore, the agency should either: (1) not define “complete application” in s. DHS 150.02; or (2) use different terminology to distinguish between an application form in which all questions are answered and the full application that includes the application form and cost information. If the definition of “complete application” in s. DHS 150.02 (3) is retained, the definition should read: “... means an application form on which all questions have been answered”. In addition, in s. DHS 150.04 (2) (e), should the paragraph reference s. DHS 150.03 (2) when describing an incomplete application?

f. In s. DHS 150.02 (8), the reference to “every year” is redundant.

g. The agency should delete the period preceding s. DHS 150.03 (title).

h. In s. DHS 150.03 (1), the requirement that “only a small business owner may apply...” raises several questions. First, it contradicts the definition of “applicant” in s. DHS 150.02 (2). Second, the reference to “small business owner” appears to apply most accurately in relation to a sole proprietorship. Who is the “owner” of an LLC or corporation for purposes of the chapter?

i. In s. DHS 150.03 (2) (a), “establish” should be replaced with “provide” to be consistent with s. DHS 150.02 (1) and s. 250.21 (2), Stats.

j. In s. DHS 150.04 (1) (a), if a small business is awarded a grant, the grant equals 30% of allowable costs. Are there any circumstances under which the agency would award a grant that is less than the 30% of allowable costs? Is there a maximum amount that can be awarded to a single applicant?

k. In s. DHS 150.04 (1) (b), what will happen if the final applicant in a given year may be awarded a partial payment based on the remaining appropriation?

l. In s. DHS 150.04 (1) (b) 1., the agency should reference the \$3,000,000 limitation in s. 250.21 (3), Stats.

m. The second sentence should be deleted from s. DHS 150.04 (1) (b) 2. because that requirement is addressed in s. DHS 150.04 (2) (e).

n. Section DHS 150.04 (2) (intro.) could be modified to provide greater clarity. For example, it could be modified to read: “The department may not award a grant under this section if any of the following circumstances apply:”.

o. In s. DHS 150.04 (2), should the proposed rule state that the department may not award a grant for a workplace wellness program that is in existence before March 15, 2014, as provided in s. 250.21 (3), Stats.?

p. Under s. 250.21 (3), Stats., the workplace wellness program grants may not be awarded after December 31, 2018. The proposed rule does not appear to address questions that might arise with the sunset of the program. For example, does the agency want to include a deadline for applications received near the sunset of the program? In the last year of the grant period, how will the agency apportion payments?