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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 15-031

#### 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.]**

#### **2. Form, Style and Placement in Administrative Code**

a. The title to s. DWD 80.13 should be written in bold text, to conform to the style prescribed by s. 1.05 (2) (a), Manual.

b. As proposed, s. DWD 80.13 is unnecessarily subdivided, as no sub. (2) follows sub. (1). The rule should be reorganized with subs. (1) to (5) instead of pars. (a) to (e). [s. 1.03 (1), Manual.]

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

a. The first paragraph of the plain language analysis should be revised or divided into two separate sentences for clarity. For example, the sentences might read:

This proposed rule will create DWD 80.13 to allow a party to a worker’s compensation case to audio record the proceedings of a formal hearing when the party has provided verbal notice to the administrative law judge and all involved parties prior to the start of the hearing and before recording begins. A party must audio record the proceedings in a non-disruptive and non-obstructive manner.

b. The proposed rule refers to recording by a “party to a claim”. Does the department intend for only those persons identified as parties in s. DWD 80.06 to be able to record a hearing? In a typical hearing, are there other attendees or participants who may wish to record the hearing?

c. Section DWD 80.13 (1) (b) should be rewritten as follows: “A party shall provide verbal notice of audio recording to the presiding administrative law judge and all other parties in attendance at the proceedings of a formal hearing before audio recording of the hearing begins.”.

d. Section DWD 80.13 (1) (c) provides that an administrative law judge determines whether “audio recording” of the proceedings disrupts or obstructs the hearing. Is the department’s intent for the judge to determine generally whether any audio recording of the proceedings is disruptive? Or, should this be an individualized determination for each party that is audio recording? If it is an individualized determination, page 3, line 7 of the proposed rule could be revised to say that a judge shall determine if “a party’s audio recording” disrupts or obstructs the hearing.

e. Section DWD 80.13 (1) (e) provides that “The audio recording” of the proceedings does not constitute the official record of the hearing. However, the statutes allow for recording as the official record under certain circumstances. Section 102.15 (3), Stats., states that testimony is recorded by a stenographic reporter, “except in the case of an emergency”, when testimony “may be recorded by a recording machine”. In such cases of emergency, an audio recording could be the official record of the proceedings.

Therefore, par. (e) could either be revised to provide that: (1) “A party’s” recording of the proceedings does not constitute the official record of the proceedings; or (2) the audio recording does not constitute the official record of the hearing, “except in the case of an emergency, as determined by the examiner under s. 102.15 (3), Stats.”.