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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 15-055

#### 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

SECTION 1 of the proposed rule cites s. 103.055 (1), Stats., as a source of statutory authority. Should the department include this citation in its analysis of the proposed rule as well?

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

a. The enumeration of sections affected by the proposed rule indicates that s. DWD 75.04 is repealed. However, it also states that s. DWD 75.04 is amended. The rule text amends, and does not repeal, s. DWD 75.04.

b. In SECTION 35 of the proposed rule, the treatment of both s. DWD 75.19 (3) to (5) and the Effective Date section are numbered “SECTION 35”. The Effective Date section should be renumbered to SECTION 36.

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

a. In SECTION 5 of the proposed rule, “monitoring” is an imprecise word that is undefined in the chapter.

b. In SECTION 7 of the proposed rule, it is confusing to define “determination of ineligibility” as “an individual...”. The use of “an individual...” in place of “determination of ineligibility” within the chapter leads to incoherent results. “Determination of ineligibility” could be redefined as “a decision by the department...” or some other similar phrase rather than as “an individual”.

c. In SECTION 9 of the proposed rule, it is unclear if the term “hearing officer” is intended to include individuals in addition to an administrative law judge. The phrase “includes” typically is construed to mean that the definition provided is illustrative and not exhaustive. Additionally, the reference to an administrative law judge in this context raises questions about the relationship between the appeal process provided by ch. DWD 75 and the contested case process in subch. III of ch. 227, Stats. Could the department clarify the relationship between these processes?

d. In SECTION 10 of the proposed rule, the comma after the last use of the word “individual” in s. DWD 75.03 (10) should be struck if the intent is to end the sentence after that word.

e. In SECTION 16 of the proposed rule, is the time limit in s. DWD 75.07 intended to be measured in working days or calendar days? Also, throughout the proposed rule, the department alternates between measuring days in working days and calendar days. Unless such measurements are mandated by law, the department may consider consistently measuring days by one method or the other in the interest of clarity.

f. In SECTION 17 of the proposed rule, s. DWD 78.08 (intro.) states that “Motions shall be filed with the hearing officer and may include any of the following:”. Are the motions listed in s. DWD 78.08 (1) to (5) intended to be the only motions that can be filed, or is this list illustrative, and not exhaustive, of the types of motions that may be filed?

g. In SECTION 21 of the proposed rule, the phrase “All of the following shall apply and” in s. DWD 75.12 (intro.) may be superfluous when followed by the phrase “shall not” because “shall not” typically indicates that all parts of the subsequent enumeration apply to the hearing officer.