



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 17-052

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

The rule summary’s listing of statutory authority cites s. 73.035, Stats., which addresses private letter rulings by the Department of Revenue. It is unclear why this is cited as authority for the State Superintendent to amend and create provisions within ch. PI 1, and it appears the citation should be removed.

2. Form, Style and Placement in Administrative Code

a. A citation in the introductory clause for the proposed rule should be corrected. The introductory clause states that the State Superintendent proposes an order to amend “ss. PI 1.01 (1), (2) (intro.) and (b)...”, but the proposed rule is not amending par. (b). Instead, the listing should read “PI 1.01 (1), (2) (intro.) and (a)...”.

b. In the introductory clause for the proposed rule, the following formatting changes could be made, as shown in s. 1.02 (1) (Example), of the Manual:

- (1) Each instance of the abbreviation “ss.” could be removed from the introductory clause.
- (2) The identification “PI” could be listed just once at the beginning of each type of treatment; it does not need to be repeated for each subsequent section within PI that is affected by the same treatment.

c. Currently, s. PI 1.04 enumerates procedures the State Superintendent may use after receiving a written complaint or appeal, stating that the Superintendent shall use “any or all” of the listed procedures. The proposed rule repeals and recreates the listed procedure under sub. (9), to remove one provision and to instead allow the Superintendent to give the parties the opportunity to submit written documentation. The following comments apply to this provision:

- (1) The subsection goes on to state that “Upon review of the documentation, the State Superintendent shall issue a decision based on a review of the documentation”. Does this mean that if DPI allows submission of written documentation, then DPI can consider only that documentation in reaching its decision? This would prevent DPI from considering other information in its possession, such as information uncovered during DPI’s own investigation or information provided by sources other than the parties.
- (2) This procedure also does not seem to follow the grammatical style of the other options. Is it perhaps intended in this provision that the State Superintendent may “request documentation from the parties and issue a decision based on a review of the submitted documentation”?
- (3) Lastly, consider taking separate actions to repeal sub. (9) and to create a new sub. (10) for this provision. Repealing a provision and reusing the existing section numbers can cause confusion and may lead to erroneous cross-references. [ss. 1.03 (5) (a) and 1.065, Manual.] This comment also applies to the treatment of s. PI 1.03 (3).

d. Since s. PI 1.09 (2) (a) is being amended, further minor amendments could be made to make the language consistent with the current drafting convention that applies to a series of subunits. Specifically, s PI 1.09 (2) (intro.) could be amended to read: “FAILURE TO PROSECUTE. The state superintendent may dismiss any complaint or appeal if any of the following occurs:”. Then, in par. (a), the comma and the word “, or” should be shown with a strike-through and an underscored period should be inserted. [s. 1.03 (3) and (4), Manual.]

e. Since ch. PI 1 governs a complaint and appeals process for which actions may already be in progress at the time the proposed rule takes effect, consider adding an initial applicability clause to specify upon what event the revised procedures would first take effect. For example: “This rule first applies to complaints and appeals that are filed on the effective date of this rule.”. [s. 1.02 (3m), Manual.]

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

The proposed rule creates s. PI 1.11, a section that includes several references to a “desk review”. However, this term does not appear anywhere in the Wisconsin Statutes or the Wisconsin Administrative Code. The proposed rule should either create a definition of “desk review” or should include a citation to a federal law definition. [For incorporating provisions of federal law, see ss. 1.07 (3) and 2.08 (5) (Note), Manual.]

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

Consider adding a definition for the term “office of legal services” to specify that it means the office of legal services in the department.