



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 23-011

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. The introductory clause for the proposed rule should be corrected to include the treatment of s. DCF 150.03 (1). [s. 1.01 (1) (a), Manual.]

b. In the last sentence of s. DCF 150.035 (1) (ar) 3., the agency may consider specifying that two half-day blocks are an equivalent of one overnight for purposes of the calculation.

c. For consistency, the agency should modify either the treatment clause for SECTION 11 or the introductory clause, as these parts of the proposed rule currently use different references for the same provision.

d. Because the proposed rule modifies an existing rule that applies to the calculation of child support orders, the agency should consider adding an initial applicability clause. For example, the clause could state: “This rule first applies to child support orders entered on the effective date of this rule.”. [s. 1.03 (3), Manual.]

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

a. In the rule summary’s identification of related statutes and rules, the agency could consider referencing 45 CFR Part 302.

b. In the rule summary’s description of the federal rule, consider including the relevant federal agency that published the rule, as well as a citation to the appropriate Federal Register.

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

a. In the last paragraph describing Minnesota’s laws, insert a period after “sec” to read “Minn. Stat. sec. 518A.33”.

b. For consistency, modify the references to percentages under Illinois law to either read “75 percent” or “75%”.

c. In s. DCF 150.03 (3) and (3m), as treated by the proposed rule, can the agency clarify the relationship between the two provisions? For example, several factors under sub. (3) appear relevant to the exercise of discretion in choosing to impute between 10 and 35 hours of work under sub. (3m), though the proposed rule has no direct link between those factors and sub. (3m). It is also unclear which, or how many, earning capacity factors under sub. (3) must be “unknown” such that the court may transition to calculation of imputed income under sub. (3m).

d. It may be helpful for the agency to clarify the relationship between proposed s. DCF 150.03 (3) and s. DCF 150.03 (1) and (4) of the current administrative code. While the cited federal law underpins the consideration of a parent’s assets as a factor for imputing income based on earning capacity, under proposed s. DCF 150.03 (3) (n), it is unclear how inclusion of assets under sub. (3) interacts with the separate, existing calculation of actual, gross income derived from assets under s. DCF 150.03 (1), or income to be imputed based on unproductive assets under s. DCF 150.03 (4).