



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 24-042

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.]

1. Statutory Authority

- a. In the rule summary’s listing of statutes interpreted, consider adding s. 977.08 (4), Stats.
- b. In the rule summary’s listing of statutory authority, consider removing the reference to s. 977.02 (7), Stats., and instead citing s. 227.11 (2) (a) (intro.), Stats. Section 977.02 (7), Stats., is interpreted in the proposed rule, but does not itself convey rulemaking authority.

2. Form, Style and Placement in Administrative Code

- a. In the rule caption’s enumeration of provisions treated in the proposed rule, it is not necessary to repeat the source designation “PD” after the initial listing for each type of treatment. In particular, the enumeration of created provisions should be listed as “to create PD 1.05 (3m), (5m), (5r), and (7m), 4.02 (2), and 4.03 (5m), (5r), and (7m)”.
- b. In the rule summary’s entry for the place to submit comments, a specific deadline for submission should be given. [s. 1.01 (2) (a) 14., Manual.]
- c. The treatment clauses for SECTIONS 1 and 5 of the proposed rule list ss. PD 1.05 (3) and 4.03 (1) (c) as being amended. However, the proposed text includes the creation of a note in each provision. A note may be created in the same manner as any other provision is created. [s. 1.12 (2), Manual.] The board should move the treatment to create ss. PD 1.05 (3) (note) and 4.03 (1) (c) (note) to be together with the other provisions created in SECTIONS 2 and 6 of the proposed rule.
- d. The text of ss. PD 1.05 (3m), (5m), (5r), and (7m), 4.02 (2), and 4.03 (5m), (5r), and (7m), created in SECTIONS 2, 4, and 6 of the proposed rule, should be shown without underscoring. The same comment applies to the text of the new notes in the previous comment, when moved to be together with these new provisions. [s. 1.04 (2) (a), Manual.]

e. In ss. PD 1.05 (5m) (c) and 4.02 (5m) (c), the citation to “s. 906.03” should be followed by the source designation “; Stats.”.

f. SECTION 3 of the proposed rule both renumbers s. PD 4.02 to PD 4.02 (1), and amends this provision. As such, the treatment clause should be revised to reflect that s. PD 4.02 is renumbered and amended, not just amended. Also, the provision contains a definition, which the board should consider moving to its own subsection at the beginning of s. PD 4.02. [s. 1.07 (2) (a), Manual.] The treatment of s. PD 4.02 (2) in SECTION 4 of the proposed rule would then need to be numbered as sub. (3). Accordingly, the provisions could appear in three treatment SECTIONS, with the treatment clauses appearing as follows:

- (1) PD 4.02 is renumbered PD 4.02 (2) and amended to read: (text, showing strike-throughs and underscoring; also, the period following the phrase “posted procedure” should be shown without underscoring as it is part of the existing text).
- (2) PD 4.02 (1) is created to read: (text of definition, no underscoring).
- (3) PD 4.02 (3) is created to read: (text, no underscoring).

g. In SECTION 5 of the proposed rule, the existing text of s. PD 4.03 (1) (intro.), (a), and (b) should not be shown, as par. (c) is the only amended provision. The text of unaffected provisions should not be shown. However, the board could consider amending pars. (a) and (b) to end each provision in a period, in accordance with the current drafting style for subunits. [ss. 1.03 (2) (a) 2. and 1.11 (3), Manual.]

h. The rule caption’s enumeration of provisions treated in the proposed rule should be updated to reflect any changes made in response to these comments.

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

a. In s. PD 1.05 (3m), it is unclear why s. 227.47 (1), Stats., is cited. This statute identifies certain information that must be included in a proposed or final decision. However, it appears that sub. (3m) is specifying who the parties are for purposes of an appeal to the board, and is not identifying the information that must be included in a proposed or final decision by the board. The board should review the intent of cross-referencing s. 227.47 (1), Stats., and consider removing the cross-reference. Also, the reason for including the board as a party in the appeal to the board is unclear. In an appeal to the board, as governed by s. PD 1.05, it appears the parties would be the appealing attorney and the state public defender. Accordingly, the reference to the board could likewise be removed. However, if a cross-reference is maintained in this provision, the abbreviation “s.” should be inserted with the citation.

b. In ss. PD 1.05 (7m) and 4.03 (7m), both references to s. 227.48, Stats., should include the abbreviation “s.” and more precisely cite to sub. (2). Accordingly, both references would appear as follows: “s. 227.48 (2), Stats.”.

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

a. In ss. PD 1.05 (5m) (a) and 4.03 (5m) (a), the board “may permit ... opening statements if it deems appropriate”. Because the word “may” makes this decision discretionary, adding the phrase, “if it deems appropriate”, is unnecessary and may lead to confusion. The board could review the intent of including this phrase and consider removing it altogether.

b. In ss. PD 1.05 (5r) and 4.03 (5r), the phrase “Rules governing the admission of evidence are governed by” is a bit awkward. Consider rephrasing to “The admission of evidence is governed by”. This will also resolve the missing word “of” in s. PD 4.03 (5r).

c. In various places of the proposed rule, the plural form of a word is used. However, generally, the singular form of a word should be used, as an action applies in each individual instance. [s. 1.05 (1) (c), Manual.] The board should review the rule for use of plural words and revise to the singular form where appropriate. For example, in ss. PD 1.05 (7m) and 4.03 (7m), the phrase “adverse decisions” could be revised to “an adverse decision”.

d. The following comments apply in ss. PD 1.05 (7m) and 4.03 (7m):

- (1) Both provisions reference “administrative” review of an adverse decision. However, if the board is conducting a contested case hearing, it is unclear what administrative review is available. The board should review the intent of these provisions and consider revising whether this is an available option.
- (2) In both provisions, a comma should be inserted after the phrase “for filing each petition”. [s. 1.06 (1) (b), Manual.]

e. In s. PD 4.02 (2) (d), the word “Tim” appears to be a typo and should be revised to the word “Time”.