



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 22-088

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. In the “Statutes interpreted” portion of the board’s analysis for the proposed rule, ss. 445.06, 445.07, 445.095, and 445.10, Stats., are all listed. However, it appears that including ss. 445.06 and 445.07, Stats., relating to the renewal of licenses and continuing education respectively, is not necessary. Rather, the rule only relates to funeral director apprenticeships and apprenticeship terms, provided in ss. 445.095 and 445.10, Stats., respectively. The board should review ss. 445.06 and 445.07, Stats., and reconsider whether the rule is interpreting these statutes and whether those citations should be removed.

b. In the analysis and supporting documents and fiscal estimate portions of the board’s analysis for the proposed rule, the verb tense should be revised to identify the analysis and fiscal estimate review that has occurred, rather than reviews that “will” occur. The outcome of those reviews should also be described.

c. In the board’s analysis for the proposed rule, in the final entry for the place where comments are to be submitted and the deadline for submission, a deadline for submission should be identified. [s. 1.01 (2) (a) 14., Manual.]

d. In SECTION 4 of the proposed rule, revise “all apprentices” to “an apprentice”. When regulating classes of people, such as apprentices, the obligation to comply with the regulation is on each individual member of the group, not the group as a whole. [s. 1.05 (1) (c), Manual.]

e. In SECTION 4 of the proposed rule, the title for s. FD 1.070 should be shown in bold font. [s. 1.10 (2) (b) 2., Manual.]

f. SECTIONS 3 and 4 of the proposed rule both refer to statutory requirements and then contain notes with the statutory language. This usage of note sections appears to rely on the notes to provide substantive requirements. Notes should not contain substantive requirements. [s. 1.12 (1) (c), Manual.] Rather, notes should contain examples and illustrations, or may simply provide the text of incorporated definitions. Also, the purpose of administrative rules is to provide an interpretation and additional guidance to members of a regulated group if necessary to effectuate

the purpose of the statute; repetition of statutory language should be used only if necessary to convey the intent of the rule. [ss. 1.01 (2) (c) 2. and 1.05 (3), Manual.] The board should review the substantive requirements in SECTIONS 3 and 4, consider its intent with respect to each of the statutory cross-references, include the applicable substantive requirements in the rule itself in a manner that would provide helpful guidance to a member of the regulated group, and delete the notes.

g. The board should consider adding an initial applicability clause to identify whether the proposed rule, particularly the semiannual reporting requirement, applies to existing apprenticeships, or to identify when the requirements begin. If the board intends the proposed rule to apply only to new apprenticeships, the clause could state: “This rule first applies to apprenticeship registrations that occur on the effective date of this rule.”. [s. 1.03 (3), Manual.] Alternatively, the board could specify that the semiannual reporting requirement first applies to the six-month period that ends six months after the effective date of the rule.

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

SECTION 4 of the proposed rule requires funeral director apprentices to report semiannually to the examining board. The rule does not, however, explain how to do so. For example, is an apprentice to report on a form provided by the board? Compare ss. FD 1.08 (1), 4.04 (1), and 6.06 (1), which provide that reporting to the board is to be done on a form provided by the board. Further, those sections also each contain a note that explains where to find these forms. The board should review the intent of SECTION 4 and consider whether to require the reporting to be done on a form provided by the board; if so, then the board should include a note explaining where to find this form. [s. 1.12 (3), Manual.]

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

a. SECTION 3 of the proposed rule addresses what happens when an apprentice “transfers” from one licensed funeral director to another. However, the term “transfers” is not defined. Section 445.095 (3r), Stats., uses the phrases, “leaves the place of employment” and “enters the employment of another”. The board should review the use of the term “transfer” and consider either defining the term or using the statutory language.

b. In SECTION 3 of the proposed rule, revise “whenever” to “when” or “if”, and revise “their” to “an”.

c. In SECTION 4 of the proposed rule, what is the timeline when a semiannual report is due? Must it be submitted within 10 business days following each six-month period of serving an apprenticeship? Within 30 days? 90 days? The rule should specify a timeline for when reporting is due following the end of each semiannual period.