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CLEARINGHOUSE RULE 00-134

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

In s. HFS 97.02, it is unnecessary to include the parenthetical “(WRC)” at the end of the sentence, because both “Wisconsin Resource Center” and “WRC” are defined in s. HFS 97.03 (15). Either the full name or the acronym may be used in s. HFS 97.02.

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

Section HFS 97.04 refers to an inmate filing a complaint under s. HFS 97.09 or 97.10. These sections, respectively, pertain to an individual and a group filing a complaint. It appears that both ss. 97.09 and 97.10 should also be cited in s. HFS 97.06 (1), which, as drafted, only pertains to an individual, and not a group, filing a complaint.

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

a. In the analysis to the rule and the transmittal letter to the Legislative Council Rules Clearinghouse, the word “it’s” in the fifth paragraph should read “its.”

b. The analysis states that the intent of this rule revision is to make ch. HFS 97 consistent with ch. DOC 310, which was modified by the Department of Corrections in 1998. This comment and some that follow cite instances in which rule provisions in ch. HFS 97 do not comport with the comparable provision in ch. DOC 310. For instance, s. HFS 97.01 (1) states

that the complaint procedures in this rule chapter afford inmates in the WRC a process by which their grievances may be easily raised and expeditiously decided. Section DOC 310.01 (1) also mentions a process by which investigation of those grievances may take place. Should investigations also be mentioned here?

c. In s. HFS 97.01 (2), the list of objectives does not include one objective set forth in s. DOC 310.01 (2) (b): “to provide the department an early opportunity to decide the issue before an inmate commences a civil action or special proceeding against a department officer, employe or agent in the officer’s, employe’s or agent’s official or individual capacity.” Should that objective also be listed in s. HFS 97.01 (2)?

d. Section HFS 97.03 (4) defines the “corrections complaint examiner” as the person outside the department designated to investigate complaints appealed to the secretary. By whom is the person outside the department designated and who may be designated?

e. Section HFS 97.08 (2) (c) refers to a decision of the parole commission “acting in any capacity.” What is the meaning of this phrase? It is not included in s. DOC 310.08 (2) (c).

f. What is meant by an “inmate record” in s. HFS 97.08 (2) (e)? Also, why is a denial of an open records request included as an exception in s. DOC 310.08 (2) (f), and not in this rule?

g. Section HFS 97.10 (3) requires that the institution complaint examiner (ICE) must issue a receipt to the spokesperson of a group filing a complaint acknowledging the complaint. This is not done for complaints filed by an individual. Is this difference intentional?

h. In s. HFS 97.11 (2), what is meant by assigning each complaint a “classification code”?

i. In s. HFS 97.11 (3), it appears that there should be a period following the word “record” on line 3 “that” following “record” should be replaced by “The record.”

j. Section HFS 97.11 (4) (a) provides that the ICE may determine a complaint frivolous if it finds that the inmate submitted the complaint solely to harass or injure one of a number of listed persons as a result of hatred, ill will, revenge or as the result of intent to harm or injure. It appears that the phrase “or as the result of intent to insult or injure” is redundant given that the complaint may be found frivolous if the inmate submitted it solely to harass or injure someone. Also, is there a reason why the word “harass” is used in the first phrase while in the second phrase, the word “insult” is used?

k. Section HFS 97.11 (9) provides that if an inmate is transferred from the WRC to another institution after an incident has occurred but prior to filing a complaint, the inmate must file the complaint at the receiving institution. The ICE at the receiving institution is required to forward the complaint to the WRC for investigation. Is there or should there be a time limit within which that must occur? The same comment applies to the language in s. HFS 97.11 (10).

1. Section HFS 97.18 requires that the department keep all records related to an inmate complaint for 11 years following disposition of the complaint. Section DOC 310.18 requires the Department of Corrections to keep these records for at least three years. Why is there such a discrepancy in the two time periods?