



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 01-122

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.]

1. Statutory Authority

a. In s. DFI-CCS 1.12 (1), under what authority does the department propose not refunding fee overpayments of less than \$2.00 and greater overpayments if a written request is not made?

b. It is noted that s. 227.01 (13) (a), Stats., excludes from the definition of a rule matters which concern the internal management of an agency and which do not affect private rights or interests. It is also noted that s. DFI-CCS 1.15 authorizes a filing officer to adopt practices and procedures for the filing of various Uniform Commercial Code (UCC) documents. It would appear that so long as those practices and procedures do not affect private rights or interests, they would not need to be promulgated as a rule. However, should those practices and procedures affect private rights or interests, it would appear that ch. 227, Stats., would require the promulgation of a rule for these practices and procedures.

2. Form, Style and Placement in Administrative Code

a. Since ch. SS 3 alphabetically follows the chapters with a DFI-CCS prefix, the material in SECTION 1 should be placed at the end of the rule.

b. In s. DFI-CCS 1.01 (19), “nonstandard” should replace “non standard.”

c. In s. DFI-CCS 1.01 (28), it is suggested that the last phrase beginning after the semicolon could be better placed in a note to the rule.

d. In s. DFI-CCS 1.06 (1) to (3), “this method” is unclear. The title of these subsections is not a substantive part of the rule and therefore needs to be incorporated into the text.

e. The entire rule makes excessive use of capitalization. For example, see “Correction statement” in s. DFI-CCS 1.08 and “Termination Statement” in s. DFI-CCS 1.10 (2) (e). [See s. 1.01 (4), Manual.]

f. Throughout the rule, “shall” or “may” should be used to express duties and permissive actions, respectively. They should replace words like “cannot,” “must,” and “will.” In s. DFI-CCS 2.01 (intro.), “may not do any” should replace “does none.”

g. The “example” in s. DFI-CCS 2.03 (10), and elsewhere throughout the rule, should not be placed in parentheses. In addition, it appears that the term “you” should be changed to the term “an individual” or a similar term.

h. In s. DFI-CCS 2.08, is the phrase “and may not, in fact, have the resources to do so or to identify such defects” really necessary to the rule? If it is, it should be placed in a note to the rule as it seems to be more editorial comment or speculation rather than a substantive provision.

i. Throughout the rule, an appropriate article should be substituted for “such.” For example, see ss. DFI-CCS 2.08 and 3.02 (1) (a). [See s. 1.01 (9) (c), Manual.]

j. In ch. DFI-CCS 3, it does not appear to be necessary to specify in the rule the particular parameters of the various data entry fields intended for the UCC information management system. It may not be advisable to do so. Every change in the computer program could necessitate a change in the administrative rules. The rules should be reviewed to determine whether these items need to be included in the rule.

k. In s. DFI-CCS 3.03 (1), (2) and (3), various examples of names, titles, and prefixes are included in the substantive provision of the rule. Examples are to be placed in a note or an “example” following the applicable rule provision. [See s. 1.09 (1), Manual.] The entirety of the rule should be reviewed for this incorrect use of examples in substantive provisions.

l. The definitions in s. DFI-CCS 3.14 should be placed in s. DFI-CCS 1.01.

m. It would appear that s. DFI-CCS 4.02 needs introductory material. An introductory sentence should be added that provides something to the effect of: “When a document is received, the following functions shall occur:”.

n. In s. DFI-CCS 4.06, it appears that the semicolon should be replaced by a colon and the material thereafter should be separated into separate subsections of the provision.

o. In s. DFI-CCS 6.04, the “1.” before “(1)” should be deleted.

p. In s. DFI-CCS 6.04 (2) (a), the subdivisions that identify the address of the UCC Section of the Department of Financial Institutions should be set off as a note following those provisions. There is no need to include the address in the substantive provision of the rule. It would be sufficient simply to say that the filings may be hand delivered to the applicable office, and the address for that office would be identified in a note. This comment also applies to s. DFI-CCS 6.06 (1).

q. The creation of ch. DFI-CCS 7 should be in SECTION 8 of the rule; there are currently two SECTIONS numbered 7.

r. It appears that the final sentence in s. DFI-CCS 7.09 (2) should actually be numbered as sub. (3).

s. The fiscal estimate attached to the rule is a fiscal estimate for 2001 Senate Bill 9. That bill is now Act 10. In addition, the rule should contain a fiscal estimate that applies to it and not the act upon which it is based.

t. SECTION 8 of the rule is unnecessary.

u. A separate effective date provision should be added to the rule. [See s. 1.02 (4), Manual.]

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

a. In s. DFI-CCS 1.01 (7), why is the statutory reference in the definition of “file number” not a reference to s. 409.102 (1) (is), Stats.?

b. Does the definition of “filing office” in s. DFI-CCS 1.01 (9) comport with the description in s. 409.501 (1), Stats.?

c. In s. DIF-CCS 1.01 (27), can the “Uniform Commercial Code as adopted in this state” be cited with more specificity? Can specific statutes be cited?

d. In s. DFI-CCS 1.03, “this chapter” should replace “these rules.” The entirety of the rules should be reviewed to correct instances of this type of error.

e. In s. DFI-CCS 1.06 (4) (a) 1., the term “rules” should be deleted. Also, “through DFI-CCS” should be replaced by “to.”

f. In s. DFI-CCS 1.07, the first sentence, it appears, should contain a reference to the methods of delivery in s. DFI-CCS 1.06.

g. In s. DFI-CCS 1.10 (1) (g), the term “Subsection” should be deleted. In addition, the statutory references should be to “Stats.” and not “Wis. Stats.” Also, the reference to “501 (1) (a)” seems incomplete; there is no such statute.

h. Additionally, the second sentence refers to “59.43 (2) (e).” Is that a reference to a statute or rule? In the last sentence, the reference to s. DFI-CCS 1.10 (a) through (f) should simply be a reference to “pars. (a) through (f).”

i. In s. DFI-CCS 1.10 (2) (intro.), the reference to “s. DFI-CCS 1.10 (1)” should simply be a reference to “sub. (1).” This comment also applies to par. (d).

j. In s. DFI-CCS 2.03 (intro.), a phrase such as “in this chapter” or “in this section” should replace “herein.”

k. In s. DFI-CCS 2.03 (1) (c) (intro.), the rule refers to “the following subparagraphs.” The rule should refer to “the following subdivisions.”

l. In s. DFI-CCS 2.03 (1) (d), the rule refers to “the agreement of August 1, 1997.” What is this agreement and can a more apt cross-reference be provided?

m. In s. DFI-CCS 2.03 (3), what is an “organization number”?

n. In s. DFI-CS 4.02 (4), should “this chapter” replace “this section”?

o. In s. DFI-CCS 5.04 (4), the rule refers to the “Ending Noise Words list” as promulgated and adopted by the International Association of Corporation Administrators. Where can this list be found? The rule should contain a note identifying where this list can be found.

p. In s. DFI-CCS 6.02 (1) (b), the reference to “ch. 779.97 (5)” should be a reference to “s. 779.97 (5), Stats.”

q. In s. DFI-CCS 6.03 (1) (intro.), the reference to “s. 109.09 (2) (b) (2), Stats.”, should be to “s. 109.09 (2) (b) 2., Stats.”

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

a. The second phrase of s. DFI-CCS 1.01 (15) is unclear and should be clarified. Could the definition be written so that an “individual” means a human being, and includes a descendant?

b. In s. DFI-CCS 1.01 (17), the phrase “has the meaning of” should be replaced by the term “means.”

c. Subdivisions 1. and 2. of s. DFI-CCS 1.01 (19) (a) are unclear. What are they modifying?

d. In s. DFI-CCS 1.01 (20), “that” should replace “who.”

e. Section DFI-CCS 1.01 (24) could be simplified if, in the introductory paragraph, the material after the statutory cite were modified to read “which may include the following.” Accordingly, the phrase “this may include” in both pars. (a) and (b) could be deleted.

f. In s. DFI-CCS 1.01 (25), the phrase “has the meaning of” should be replaced by the term “means.”

g. In s. DFI-CCS 1.03, what are “usual and customary means”? Can this phrase be better defined or can examples be provided of what these means are?

h. In s. DFI-CCS 1.05, the term “a.m.” should be inserted after “7:45” and the term “p.m.” should be inserted after “4:30.” In addition, the provision seems to imply that the offices are open different hours on state legal holidays. Is that the rule’s intent?

i. In s. DFI-CCS 1.05, a parenthetical phrase is included in the last sentence. The rule should avoid the use of parenthetical expressions. [See s. 1.01 (6), Manual.] If the material is substantive and necessary to the rule, it should be set off by commas. If it is not substantive or not absolutely necessary for the rule, it can be placed in a note. The rule is replete with parenthetical expressions. The entirety of the rule should be reviewed to eliminate parenthetical expressions wherever they exist.

j. Several provisions of the rule discuss electronic filing of documents and electronic transmission of search requests. For example, see ss. DFI-CCS 1.06 (4) and 1.09. However, s. DFI-CCS 1.04 seems to prohibit this. These provisions should be reviewed for consistency.

k. In s. DFI-CCS 1.09 and throughout the rule, reference is made to “Department of Financial Institutions.” However, the term “department” is defined in the rule and is a sufficient reference. This comment also applies to use of the undefined term “DFI” in s. DFI-CCS 6.04 (1) (intro.).

l. In s. DFI-CCS 1.10 (1) (e), the phrase “on half of the fee” appears. What does this phrase mean? In addition, the reference to “s. DFI-CCS 1.10 (1) (a)” can be simplified to a reference to “par. (a).” In the alternative, if the phrase is “one half,” then “\$10.00” can replace everything after “be.”

m. In s. DFI-CCS 1.10 (2) (intro.), the term “it” should be replaced by the term “the statement.”

n. With respect to s. DFI-CCS 1.10 (2) (e), what is it an exception to? The paragraph should be redrafted, perhaps as a part of par. (d).

o. In s. DFI-CCS 1.10 (3) (c) (intro.), the sentence should begin: “The fee for copies” In the subdivisions that follow, the phrase “the fee” can be deleted, the word “for” can become the first word in each sentence, and a comma can replace “is.” This comment also applies to par. (d).

p. In s. DFI-CCS 1.10 (3) (e) 1., does the CD-ROM contain images of all UCC documents filed or just those requested by the requester? The rule should be clarified.

q. In s. DFI-CCS 1.10 (4), the last sentence provides that there will be no reimbursement for processing termination statements. To whom will there be no reimbursement? The rule should be clarified.

r. The title to s. DFI-CCS 1.11 (4), and other parts of the rule, use slashed alternatives, such as “and/or.” The rule should not use such terminology. [See s. 1.01 (9), Manual.]

s. Section DFI-CCS 1.11 (5) provides that additional approved forms of payment may be established by “department policy.” Where will that be established and how will it be disseminated to the public? Will a rule be promulgated?

t. Section DFI-CCS 1.13 (1) uses the term “PDF form.” If acronyms are to be used in the rule, they should be defined. [See s. 1.01 (8), Manual.]

u. In s. DFI-CCS 1.13, and consistently throughout the rule, the rule uses the passive voice in directing that certain things should be done. For example, throughout the rule, phrases such as “methods are available,” “copies will be made available,” and “name is treated” appear. The rule should use active voice when providing direction. Thus, a form “shall be available,” “copies shall be made available” and a “name shall be treated.” The entirety of the rule should be reviewed for consistent use of the active voice in providing the rule’s directives. In addition, it should be clear in the rule who is being directed to do something.

v. Section DFI-CCS 1.15 refers to “Article 9.” That term is not defined in the rule. What is Article 9? The rule should be clarified.

w. Section DFI-CCS 2.03 (intro.) is worded rather awkwardly. It is suggested that the first sentence be reworded substantially as follows: “A filing may be refused if it does not comply with any of the following requirements:”. In addition, s. DFI-CCS 2.03 (intro.) is not really introductory material. Introductory material always ends in a colon and leads into the subunits and contains words like “all of the following.” The entirety of the rule should be reviewed to ensure that introductory material is introductory and the appropriate end punctuation is provided.

x. Section DFI-CCS 2.03 (1) (a) uses the term “ASCII.” That term is not defined. It should be.

y. Section DFI-CCS 2.03 purports to identify grounds for refusal of the UCC document. However, it does not appear that sub. (6), as drafted, is a ground for refusal.

z. In s. DFI-CCS 2.05 (1) and (2), the sentences do not appear to be complete. The reader is left to ask: “Not later than five business days from what?” This comment also applies to subs. (1) and (2) of s. DFI-CCS 2.06.

aa. In s. DFI-CCS 3.13, what does the phrase “but no action is then taken” mean? Does it mean that action is prohibited, or does it mean that action need not be taken but may be taken?

ab. In s. DFI-CCS 4.05, last sentence, should “or 30th” be inserted after “fifth”?

ac. In s. DFI-CCS 4.07, the first sentence should begin: “Correcting an error” The second sentence should be: “An error may be corrected by”

ad. Section DFI-CCS 5.04 should be preceded by the title “DFI-CCS”.

ae. In s. DFI-CCS 5.04 (intro.), the phrase “and only the following rules” should be deleted.

af. In s. DFI-CCS 6.02 (2) (b), the second occurrence of the phrase “, if they wish,” should be deleted.

ag. In s. DFI-CCS 6.03 (1) (a), the term “DFI agents” is not defined in the rule. Only defined terms should be used.

ah. In s. DFI-CCS 6.03 (1) (c), the term “These” should be replaced by the phrase “Wage claim liens.”

ai. In s. DFI-CCS 6.03 (2) (a), and elsewhere throughout the rule, the rule fails to use complete sentences. Generally, rule provisions should be drafted as complete sentences. The entirety of the rule should be reviewed to ensure that complete sentences are used when necessary.

aj. In s. DFI-CCS 6.04 (1), “department” should replace “DFI.” Also, “into” should replace “in to.” In sub. (1) (d), “fee” should replace “fees.”

ak. In s. DFI-CCS 6.04 (2) (e) 2., is the \$5.00 fee per page or per document? The rule should be clarified.

al. In s. DFI-CCS 7.01 (1) (a) and (b), the sentences should begin with a capital letter and end with a period. This comment also applies to s. DFI-CCS 7.02 (1) to (3).

am. Chapter DFI-CCS 7 repeatedly uses the term “land recording offices.” What are these offices? The rule does not define them. It should.

an. In s. DFI-CCS 7.03 (3), “require” should replace “requires.”

ao. Section DFI-CCS 7.03 (5) (a) and (b) should be written as complete sentences.