



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-028

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 October 2002.]

1. Statutory Authority

See pertinent comments below under Clarity, Grammar, Punctuation and Use of Plain Language as the comments relate to ss. Jus 16.02 and 16.03.

2. Form, Style and Placement in Administrative Code

a. 2003 Wisconsin Act 118 imposes a number of additional requirements on agency rule making. It is suggested the rule be reviewed for compliance with the requirements of that Act. For your information, see the attached memorandum, dated April 13, 2004, from Ron Sklansky to state agencies.

b. It is suggested that the department’s analysis of the rule be expanded. (Sufficient background information on the rule is provided but the summary of the rule’s content could be expanded.)

c. Throughout the rule, references to “Directory” and “Attorney General” should be lower case. All of s. Jus 16.01 (1) should be lower case except the first word and “Stats.”

d. In s. Jus 16.01 (2), “same” may be deleted.

e. Section Jus 16.01 (3) is not a definition and, therefore, should not be included in the definition section. In addition, “this chapter” should replace “these rules.”

In the alternative, the paragraph could be redrafted as a definition as follows—““Quarter” means January 1 to March 31; April 1 to June 30; July 1 to September 30; and October 1 to

December 31.” This definition would be placed alphabetically between the other two definitions.

f. The title of s. Jus 16.02 should refer only to quarterly certifications.

g. The second sentence of s. Jus 16.04 (2) (a) should be relocated. If it is intended to follow the introductory clause of sub. (2), it should be made a separate paragraph of that subsection. If it is intended that the Attorney General have discretion to remove the manufacturer or its brands from the directory in those cases, then the provision should be made a separate subsection.

h. A more descriptive title should be considered for s. Jus 16.05. Note that s. Jus 16.05 (1) is the only subsection in the rule with a title. Use of titles for subunits should be consistent.

i. The rule needs an effective date clause. [See s. 1.02 (4), Manual.]

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

a. See s. 1.07, Manual, for the preferred format for referencing statutes. The format is “s. __, Stats.”

b. A statutory reference should be substituted for reference to “the Wisconsin tobacco master settlement agreement act” in s. Jus 16.02.

c. The Notice of Public Hearing refers to 2003 Wisconsin Act 245. This appears to be an error.

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

a. The following comments apply to s. Jus 16.02:

1. Is it intended that quarterly certifications may be required only if quarterly escrow deposits are required?
2. Is the required certification the certification that is otherwise required annually under s. 895.10 (2) (b) 3., Stats.? If so, the department may wish to review whether there is authority to require that certification on a quarterly basis. If not, the section should be clarified as to precisely what is required to be certified on a quarterly basis.
3. There is no standard provided for the Attorney General to determine when quarterly certifications may be required.
4. It is suggested that the second sentence end after the second “certifications.” The next sentence should then be modified by adding “in which sales were made” before the period.

b. Section Jus 16.03 fails to set forth a standard for the Attorney General to use in determining whether quarterly escrow payments will be required.

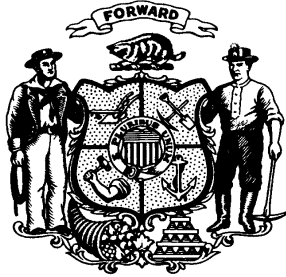
- c. Regarding the use of “may” in s. Jus 16.03 (3), compare s. 895.12 (2) (b) 2., Stats.
- d. The department may wish to review the use of “compliant” in s. Jus 16.04 (1) (b). Is “complying” intended?
- e. Compare the reference in s. Jus 16.04 (2) (b) to s. 895.12 (2) (a) 2. and 3., Stats., to the reference in s. 895.12 (2) (b) 1., Stats., which references subs. 3. to 5. of s. 895.12 (2) (a), Stats.
- f. In s. Jus 16.05 (2), is the reference to “providing” notice 10 days before a manufacturer or brand family is removed from the directory sufficiently clear? When is notice “provided”?

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TO: ALL AGENCY HEADS AND AGENCY RULE CONTACT PERSONNEL

FROM: Ronald Sklansky, Director, Wisconsin Legislative Council Rules Clearinghouse

RE: New Rule-Making Requirements Imposed by 2003 Wisconsin Acts 118 and 145

DATE: April 13, 2004

2003 Wisconsin Acts 118 and 145 impose new requirements on an agency engaged in rule-making. Act 118 took effect on February 6, 2004 and Act 145 will take effect on July 1, 2004. Among other things, the Acts require that an agency provide the following information in order to provide a basis for the proposed rule and to provide the public with greater Internet access to the rule-making agency:

1. An explanation of the agency's authority to promulgate the proposed rule under the statutes cited as statutory authority for the proposed rule. [Act 118]
2. A summary of, and preliminary comparison with, any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule. [Act 118]
3. A comparison with similar rules in adjacent states. [Act 118]
4. A summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule. [Act 118]
5. Any analysis and supporting documents that the agency used in support of the agency's determination of the proposed rule's effect on small businesses or that was used when the agency prepared an economic impact report. [Act 118]
6. For a proposed rule that the agency determines may have a significant fiscal effect on the private sector, the anticipated costs that will be incurred by the private sector in complying with the proposed rule. [Act 118]

7. A statement as to whether a proposed rule affects small businesses. [Act 145]
8. An email address and telephone number of the agency contact person. [Act 145]
9. The identification of a place where comments on a proposed rule should be submitted and the deadline for submitting the comments. [Act 145]
10. The time, date, and place of any public hearing on the proposed rule, with a reference to the clearinghouse rule number, as soon as notice is submitted to the Revisor of Statutes. [Act 145]

When preparing a proposed rule package, including the text of a proposed rule and a fiscal estimate, the new statutory requirements, along with prior law, can be accommodated uniformly if all agencies preface a proposed rule with an analysis in the following format:

1. **Statute interpreted:.**
2. **Statutory authority:.**
3. **Explanation of agency authority:.**
4. **Related statute or rule:.**
5. **Plain language analysis:.**
6. **Summary of, and comparison with, existing or proposed federal regulation:.**
7. **Comparison with rules in adjacent states:.**
8. **Summary of factual data and analytical methodologies:.**
9. **Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:.**
10. **Anticipated costs incurred by private sector:.**
11. **Effect on small business:.**
12. **Agency contact person: (including email and telephone).**
13. **Place where comments are to be submitted and deadline for submission:.**

Act 145 also requires that an agency provide the clearinghouse with a notice of the time, date, and place of any public hearing on a proposed rule, preferably with a reference to the appropriate clearinghouse rule number, as soon as the notice is submitted to the Revisor of Statutes. If this information is known at the time a proposed rule is submitted to the clearinghouse, it can be included in the rule analysis.

In addition, Act 118 requires that the following information must be included in an agency rule report to the Legislature:

1. A copy of an economic impact report.

2. A copy of a report prepared by the Department of Administration regarding an economic impact report.
3. A detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.
4. A summary of public comments to the proposed rule and the agency's response to the comments, including an explanation of a modification made as a result of public comments.
5. Any change to the proposed rule's plain language analysis or fiscal estimate.

Finally, in order to facilitate electronic access to the rule-making process, the clearinghouse continues to request that all state agencies submit proposed rules, modified versions of proposed rules, and agency reports to the Legislature (including the text of the proposed rule) both in the current hard copy form and in an electronic format. The global address for all electronic submissions to the clearinghouse simply is "clearinghouse." The full email address for electronic submission is: clearinghouse@legis.state.wi.us.

If there are any questions about this process or about 2003 Wisconsin Acts 118 or 145, please contact me at 266-1946, or Dick Sweet at 266-2982.

RS:rvjal