



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-124

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.]

2. Form, Style and Placement in Administrative Code

a. In the department’s analysis, statutory references under “statutes authorizing promulgation” and “statutes interpreted” should be reviewed. Some of the provisions listed under “statutes authorizing promulgation” appear to be better placed under “statutes interpreted.” Furthermore, it is not clear why ss. 452.10 (4) and 452.135, Stats., are referenced.

b. The April 13, 2004, memorandum from the Director of the Wisconsin Legislative Council Rules Clearinghouse (copy enclosed) regarding new rule-making requirements imposed by 2003 Wisconsin Acts 118 and 145 suggest, on page 2, a format for an analysis that prefaces a rule. The format lists 13 statutorily required items. The preface of this rule should be compared to the list of items to determine which items have yet to be completed.

c. The relating clause of the rule should be more descriptive of what the rule relates to. For example, it could state “relating to supervision by real estate brokers.”

d. It is not clear why the substance of s. RL 17.08 (1m) is not included under sub. (1) of that section. The two subsections overlap to some degree and creation of this separate subsection may cause confusion; for example, does sub. (1m) imply that the included supervisory duties do not apply to a broker-employer who has not delegated supervisory authority (cf. the definition of “supervising broker;” although it is acknowledged that the second clause of s. RL 17.08 (4) appears to address this issue)? Further, is the review under sub. (1m) a “reasonable review,” as defined? Finally, consideration should be given to substituting “described in” for “as set forth in” if the former is appropriate.

e. It is suggested that s. RL 17.08 (4) be rewritten as follows: “A broker-employer who is not a business entity may delegate the duty to supervise licensed employees to a supervising broker. In the absence of a specific supervising broker delegation to another person, a broker-employer who is not a business entity is deemed to be a supervising broker.” Consideration might be given to placing the substance of the second sentence in the definition of “supervising broker.” For example:

“Supervising broker” means any of the following:

(a) An employer-broker that is not a business entity and who has not delegated the duty to supervise a licensed employee to another under s. 17.08 (4).

(b) (Definition as proposed).

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

a. In s. RL 17.08 (5), a comma should follow “broker-employer” in the first sentence; “identifying” should be changed to “identify” and a comma placed after “delegated,” and “be” should be placed between “and” and “signed.”

b. It is assumed that there is no intent to affect a broker-employer’s liability under s. 452.12 (3), Stats. Consideration should be given for including a statement to that effect in a note to s. RL 17.08 (3) and (4).