



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-131

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 s. Ins 5.17 (5), the new underscored material should follow, not precede, the stricken material. [See, also, s. Ins 5.27 (4). and s. 1.06 (1), Manual.]

b. Section Ins 5.17 (5) should not be included in the same section of the rule as s. Ins 5.21 (1) and (2), since those rule sections are not consecutively numbered. Likewise, s. Ins 5.25 (1) (c) should not be included in the same section of the rule as s. Ins 5.21 (2) (e), (f) and (g). [See s. 1.04 (2) (a) 3., Manual: “When a number of full rules sections are affected in their entirety by the same treatment, but they are not consecutively numbered, they may not be included in a single section of the draft.”]

c. In s. Ins 5.21 (2) (f) and (g), the word “section” should be replaced by the word “paragraph.”

3. Conflict With or Duplication of Existing Rules

Does s. Ins 5.25 (1) (c) conflict with s. Ins. 5.19 (3), which prohibits an administrative law judge from exercising authority reserved to the final decision maker, unless the commissioner or a board orders that the administrative law judge’s decision is the final decision?

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

a. In item 1. of the analysis under “Statutes interpreted,” it appears that sub. (4), rather than sub. (3), of s. 601.41, Stats., should be cited, since s. Ins 5.27 (4) is amended to add an order

issued under s. 601.41 (4), Stats. It then appears that s. 601.41 (4), Stats., should be cited under “Statutory authority” as well as cited under “Statutes interpreted.”

b. In item 1. of the analysis under “Statutes interpreted,” it does not appear that s. 628.34 (12), Stats., should be cited there, since nothing in the rule appears to interpret that statute, which allows the commissioner to define specific unfair trade practices by rule. A similar comment applies to the statement of “Statutory authority.”

c. Section 600.01 (2), Stats., also does not appear relevant under “Statutes interpreted.”

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

a. In item 5. of the analysis in the last sentence “or” should be changed to “for.”

b. In s. Ins 5.21 (1) (a) since “or fails” appears before the third condition in the fourth line, the “or” before “fails” in the third line should be replaced with a comma.

c. Because s. Ins 5.21 (1) (b) 2. states that “failure to receive” one of the specified mailings is not a basis to establish excusable neglect, it appears that failure to file an answer or appear because a specified mailing was lost in the mail would require the administrative law judge to issue a final default decision under s. Ins 5.21 (1) (a). Is this the intended consequence?