



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 07-056

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 January 2005.]

2. Form, Style and Placement in Administrative Code

a. In the SECTION 1 treatment clause, “Chapter” should be inserted before “NR 8 (title).”

b. In the definitions in s. NR 8.51 (2), the department should consistently use either “has the meaning given under (section)” or “has the meaning given in (section).”

c. The phrase “issuance” is defined under s. NR 8.51 (4). This term is used in multiple contexts in the text of the rule including in references to the department’s ALIS system, in the title to subch. I, and in a reference in a note to the issuance of a bench warrant after s. NR 8.52 (1) (a) 2., all of which do not fall under this definition of “issuance.” The department should consider changing this term to make it unique to the circumstances that are targeted, or roll its substantive requirements into the definitions of types of “notice.” Note also that the term “issue” is used in what appears to be the same context in the rule proposal. [See s. NR 8.52 (1) (a) 1. and (b) 1..]

d. Section NR 8.51 (5) limits the department’s ability to send official communications to an address updated after the date of citation issuance. This could create procedural problems for the department in attempting to provide actual notice to the violator while also meeting its obligations under the rule.

e. In the definitions of “notice of failure to comply” and “notice of revocation,” the substantive requirements in the second sentence of each definition should not be included in a definition.

f. The proposal includes a definition of “wildlife related violation.” Note that s. 29.03 (2), Stats., includes definitions of both “wildlife violation” and “wildlife law.” The department should consider differentiating between these phrases or incorporating them together to avoid confusion. This also impacts other definitions such as the definition of “violator” which references a “wildlife related violation” under the rule proposal and “wildlife violation” under the statute. Also, the department should correct multiple references to “wildlife related *law* violation” in other parts of the rule.

When reviewing these wildlife-related definitions, attention should be given to whether fishing-related violations are being defined out of the definition of “violator” where that is not the intent.

g. Parenthetical acronyms should not be used in rules. [See s. 1.01 (6) and (8), Manual.] If acronyms like ALIS and CCAP are used in this rule, they should be defined in s. NR 8.51.

h. Section NR 8.52 (1) (c) a. to c. should be renumbered s. NR 8.52 (1) (c) 1. to 3.

i. Introductory material should include a phrase such as “all of the following” or “any of the following.” [See s. 1.03 (8), Manual.] For example, in s. NR 8.52 (1) (d) 2. (intro.), “do all of the following” should be inserted before the colon.

j. It appears that s. NR 8.52 (1) (f) 3. and (2) (d) 3. could be removed.

k. Section NR 8.52 (1) does not have a par. (e). While this is permissible, a question is raised as to whether it is intentional.

l. By using the defined phrase “notice of failure to comply” in s. 8.52 (2) (a), the rule may limit the department from taking action against a violator if the participating state does not provide notice that meets the “notice of failure to comply” definition. It is suggested that this provision be modified to only require the department to receive notice from a participating state regarding the individual’s activities there.

m. In s. 8.52 (2) (d), the “issues specified in s. 29.972 (1) (a) to (c)” are the same issues expressly listed after that reference.

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

a. The department should change “them” to “the violator,” “the violators” to “the violator’s” and “notification letter” to “notice of failure to comply” in s. NR 8.52 (1) (a) 1. Similar changes should be made where “them” and “their” are used elsewhere in the rule.

b. The department should consider revising s. NR 8.52 (1) (a) 1. f. and (2) (a) 1. f. to read: “That revocation will not occur if the person appears before the court or otherwise resolves the matter before the revocation date.”

c. The department should change “notice of noncompliance” to “notice of failure to comply” in s. NR 8.52 (1) (b) 1. (intro.).

d. Section NR 8.52 (1) (b) 1. a. should be clarified. Is this passage intended to include references to both the “notice of revocation” and the “notice of failure to comply”? If the requirement related to the “notice of failure to comply” is not in error, this provision belongs under the previous section on the duties of the clerk of courts. Is this section intended to differentiate between the revocation ordered by the court in the previous section and administrative revocation by the department? If not, how can the date of issuance of the notice of revocation control the date of revocation when the date has already been established by a court? The overlap between these sections should be clarified.

e. The word “under” should be added before “which” in s. NR 8.52 (1) (b) 1. c.

f. “Written” should be removed from s. NR 8.52 (1) (c). Because of the multiple references to “verified” or “verification” in the rule proposal, consider defining this term in s. NR 8.51.

g. “Revocation of the” and “which resulted from the failure to pay or appear” should be removed from s. NR 8.52 (1) (c) a. A similar change is needed in sub. (1) (d) 2. a.

h. The phrase “as necessary” should be removed from s. NR 8.52 (1) (c) b. and (d) 2. b. and elsewhere this phrase is similarly included.

i. “Violators” should be changed to “violator’s” in s. NR 8.52 (1) (d) 2. a. (and various other parts of the rule where “violators” is used instead of “violator’s”).

j. Section NR 8.52 (1) (f) 1. should be changed to: “A violator may petition for administrative review of a revocation by the department if the violator does any of the following: a. Fails to respond to a warrant or summons. b. Fails to appear on the violator’s court date. c. Fails to make a deposit or a deposit and stipulation. d. Fails to appear before the court and is subject to a bench warrant.” (Note: are b. and d. redundant?) This subdivision appears to be redundant with the second note following par. (f) 4., which would be a better way to approach this issue. The department should review other administrative review provisions for similar needed changes.

k. Section NR 8.52 (1) (f) 2. and (2) (d) 2. should be clarified. This provision should use active voice and more clearly state what will not be the subject of a hearing. What does “good cause for failing to resolve the matter” mean? Reference to “section” in this provision should be changed to “paragraph.”

l. Are the phrases “suspension is upheld” and “revocation is denied” referring to the same underlying action in s. NR 8.52 (1) (f) 3. and 4., and (2) (d) 3. and 4.? It appears as if these phrases should be changed to “revocation is upheld” and “revocation is overturned.”