



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 07-102

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.]

1. Statutory Authority

a. In s. HFS 45.11 (8) (a) 9., and in several other provisions of the proposed rule, it is not clear that the department has the authority to revoke or deny a license based upon a determination that a person has possessed a loaded firearm or controlled substance or is involved in drug trafficking. At the very least, the provision should require the department to have reason to believe the person has committed one of the acts and that the action be related to their fitness to provide child care. Also, there are cases in which a person may legally possess a loaded firearm or a controlled substance. It is not clear that legal possessions should be the basis for revoking a license. Finally, “drug trafficking” is not defined.

2. Form, Style and Placement in Administrative Code

- a. In s. HFS 45.03 (11), “~~Qualified~~ qualified” should be deleted and replaced with “qualified” to reflect the text of the current rule.
- b. In s. HFS 45.03 (18), the underscoring of the period should be deleted.
- c. In s. HFS 45.04 (3) (a), the strike-through of the comma following “~~center~~” should be deleted.
- d. In the note to s. HFS 45.04 (5) (a), the comma after “The Department’s form” should be deleted or underscored.

e. In the note to s. HFS 45.04 (6) (a) 6., the second instance of “Department’s” should be deleted or underscored.

f. In s. HFS 45.05 (1) (b) 1. a., the final period should not be underscored.

g. In the note to s. HFS 45.05 (1) (c), the website address should not be underscored.

h. In s. HFS 45.06 (1) (a), the hyphen in “2-family” should be underscored.

i. In s. HFS 45.06 (6) (c), the comma after “~~limits~~” should not be stricken.

j. In the note to s. HFS 45.09 (1) (c) 1., the text beginning with “Wisconsin has an information and referral service” should be underscored because it is being added to the note.

k. SECTION 75 needs to be divided into additional SECTIONS because some of the provisions already exist and need to be repealed and recreated or amended instead of created. One example is s. HFS 45.11 (4) (a) 2.

l. In s. HFS 46.03 (14r) (b), the period at the end of the sentence should be underscored.

m. In s. HFS 46.04 (2) (k), “~~and any exceptions or stipulations~~” should be deleted because that language is not in the current rule.

n. In s. HFS 46.04 (3) (a), the sentence begins with “Any”, not “The”.

o. In s. HFS 46.04 (3) (g), a comma should be inserted after “employees” to reflect the current provision’s text.

p. In the treatment clause for SECTION 97, the comma between (m) and (n) should be replaced with “and.”

q. In s. HFS 46.05 (1) (ag) and (ar), titles need to be created for the new paragraphs to be consistent with the current rule.

r. In Table HFS 46.05-A, item 1., “education” should not be underscored. Also, in item 8., “A ~~License~~” should be replaced with “License A”.

s. In s. HFS 46.05 (1) (g), “~~early’s~~” should be replaced with “early”.

t. In s. HFS 46.05 (1) (h) 2., “requirements” should be replaced with “qualifications” to reflect the current text of the rule.

u. In s. HFS 46.05 (1) (i) 3., “A volunteer” should be replaced with “Volunteers A volunteer”.

v. In the note to s. HFS 46.05 (2) (a) 13., there should be no language stricken or underscored because the note is created.

w. In the treatment clause for SECTION 126, it appears that the reference to the title of Table 46.05-D should be deleted.

x. In s. HFS 46.05 (4) (d), there should be a comma before “~~but~~” and the underscored comma should be deleted.

- y. In s. HFS 46.06 (6) (b) 3., “appropriated” should be replaced with “appropriately”.
- z. Please review SECTIONS 135 and 137. The first repeals s. HFS 46.06 (9) (c) 3., and the second creates a note for that section.
 - aa. In s. HFS 46.06 (12) (a), the hyphen in “6-foot” should be underscored.
 - bb. In s. HFS 46.06 (12) (b), the entire second sentence should be underscored.
 - cc. In s. HFS 46.07 (6) (c), “~~undiagnosed~~” should be deleted.
 - dd. In s. HFS 46.09 (4) (a) 5., the comma after “hands-free” should not be underscored.
 - ee. In the note to s. HFS 46.11 (4) (b) 6., “~~CFS-0065~~ CFS-65” should be replaced with “CFS-65”.
 - ff. SECTION 175 states that it is creating a note. This does not appear to be correct.
 - gg. In s. HFS 55.02 (1), the period following the first “Stats” should not be underscored.
 - hh. The treatment clause for SECTION 189 should read “HFS 55.04 (3g) and (4m) are created to read:”. The second definition that is being created should follow the definition in sub. (4).
 - ii. In s. HFS 55.05 (1) (c) 11., the stricken language should be deleted because the subdivision is being created. This comment also applies to the underscored language in subd. 12.
 - jj. In s. HFS 55.06 (1), “will” should not be underscored. However, both of the last two sentences in that subsection need to use “shall” and be drafted in the active voice--“A licensing representative of the department shall. . .”.
 - kk. Throughout the rule, “may not” should replace “shall not” in expressing a prohibition. For example, see s. HFS 55.05 (8) (c) and (d).
 - ll. Section HFS 55.07 (2) (intro.) should be renumbered sub. (2) (a) because it does not introduce the subsequent paragraphs.
 - mm. In s. HFS 55.09 (3) (g) 1., “1.” should not be underscored because the paragraph is being renumbered in the treatment clause.
 - nn. In s. HFS 55.43 (1) (d), the text in the proposed rule does not match the text of the current provision. Please review.
 - oo. In s. HFS 55.44 (7) (b) 1., in the first sentence, “water activities” should be replaced with “aquatic activities.” If the agency wishes to use the term “water activities,” “aquatic” must be deleted and replaced with “water.”
 - pp. In s. HFS 55.44 (8) (b), the text beginning with “as specified in” should be underscored because it is new. Also, the stricken language should be deleted. Finally, “ch.” should be replaced with “s.”

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

- a. In the note to s. HFS 45.02 (1) (intro.), the citation to s. DWD 55.04 (1) should be to s. DWD 56.04 (1). This comment also applies to the notes to ss. HFS 46.02 (1) (g) and 55.03.
- b. In s. HFS 45.04 (4) (c) 4., “s. HFS 45.04 (6) (a)” should be replaced with “sub. (6) (a) 2.”
- c. In s. HFS 45.05 (1) (b) 2., “s. HFS 45.05 (1) (b)” should be replaced with “this paragraph.”
- d. In the note to s. HFS 45.06 (6) (b), “Ch. NR 890.09” should be replaced with “Section NR 809.09.”
- e. In the treatment clause for s. HFS 45.07 (6) (f) 2., a period should be inserted after “2. a”.
- f. In s. HFS 45.08 (5) (d), “pars.” should be replaced with “par.”
- g. In s. HFS 46.04 (6) (a) 8., the citation should be to s. HFS 46.07 (6) (k) 3. instead of s. HFS 46.07 (7) (k) 3.
- h. In the note to s. HFS 46.06 (1) (a), “chapter Comm 5” should be replaced with “ch. Comm 5.”
- i. In the note to s. HFS 46.06 (6) (b) 2., “Chapter NR 890.09” should be replaced with “Section NR 809.09.”
- j. In SECTION 149, “6.m.” should be replaced with “6m.”
- k. In s. HFS 55.04 (5), a comma should be inserted after “Stats.”
- l. In s. HFS 55.04 (9), “ch. HFS 55” should be replaced with “this chapter.”
- m. In s. HFS 55.05 (8) (b), should the reference to sub. (10) (d) be to sub. (10) (a)?
- n. In the note to s. HFS 55.41 (4) (b) 3., should the reference be to all of s. HFS 55.44 (6) instead of just sub. (6) (a)?
- o. In s. HFS 55.43 (3) (e) 4., the reference to s. Comm 52.63 should be changed to what is in the current rule--ch. Comm 9 and s. Comm 62.2900. However, it also appears that the reference to ch. Comm 9 is incorrect and should be repealed or corrected in the proposed rule.
- p. In SECTION 380, s. HFS 55.44 (6) (g) 1. h. is repealed, but there is no sub. (6) (g).

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

- a. In the summary of the proposed rule, under “Explanation of agency authority,” the citation to s. 48.67m, Stats., should be to s. 48.67, Stats. Also, the references to HFS 45, 46, and 55 should be preceded by “ch.”

b. In the plain language analysis of ch. HFS 55, in the first bulleted point, “for” should be inserted after “accepted.”

c. In the analysis used to determine the effect on small business for ch. HFS 46, in the first sentence of the second paragraph, “ch.” should be inserted before “HFS 46.”

d. In s. HFS 45.03 (9), “hours a day” should be replaced with “hours per day.”

e. In s. HFS 45.03 (10), the underscored comma should be moved to precede “whether.”

f. In s. HFS 45.03 (13m), it appears it would be better to use “potential” instead of “possible.” This comment also applies to ss. HFS 46.02 (13m) and 55.04 (15).

g. In s. HFS 45.03 (15) (b) to (d), “_ F.” should be replaced with “° F.” This comment applies throughout the proposed rule when temperatures are referenced.

h. In s. HFS 45.03 (34), “, (m)” should be replaced with “and (m).”

i. In s. HFS 45.04 (2) (e) 8., it appears “any time children are transported” could be replaced with “for any purpose.”

j. In s. HFS 45.04 (2) (i), “, but not limited to,” could be deleted because it is repetitive. This comment applies in several provisions throughout the proposed rule.

k. In the note to s. HFS 45.04 (5) (b), “in” should be inserted before “Appendix A.”

l. In s. HFS 45.04 (5) (h), “completion of” should be inserted after “Documentation of”.

Also, the agency may wish to include the names of particular training courses in a note instead of the text of the rule in case the names change in the future.

This comment also applies to s. HFS 45.05 (1) (b) 7., but the course name is capitalized. A consistent approach should be taken. Also, the “F” in “Fundamentals” must be italicized.

m. In the note to s. HFS 45.04 (6) (a) 4., a space should be inserted after “1. and 2.”

n. In s. HFS 45.05 (1) (b) 1. b., it is not clear what is meant by “or a provider was caring for children.”

o. In s. HFS 45.05 (2) (a) 13. (intro.), “would require” should be replaced with “requires”.

p. In s. HFS 45.08 (3) (b), it appears that “report” at the end of the first sentence should be replaced with “record”.

q. In s. HFS 45.08 (5) (c), the comma after “8 years” should be moved to follow “of age”.

r. In the treatment clause for SECTION 69, the period following “Note” should be deleted.

s. In the note to s. 45.09 (1) (c) 1., it appears that “years” in the form title should be capitalized. In addition, a comma should follow the title of the form. Finally, in the last

sentence, hyphens should be inserted between the words “Birth to Three” for consistency with the use of that phrase earlier in the note.

t. In s. HFS 45.11 (7), “license” should be deleted because it is repetitive.

u. In the note to s. HFS 45.11 (8) (b), a semicolon should be inserted after “activities of the center.”

v. The final two sentences in s. HFS 45.11 (11) (a) seem to be contradictory. For example, if a fax is received at 1:00 a.m. on a Tuesday, the next-to-last sentence says that it is considered filed on Tuesday, while the last sentence says that it is considered filed on Wednesday.

w. In s. HFS 46.03 (4g), it appears that “provided in center owned, leased or contracted vehicles” should be replaced by “a vehicle owned, leased, or contracted for by the center”.

x. In s. HFS 46.04 (2) (n), a specific form is referenced. The agency may wish to include this in a note in case the form’s name or number is modified in the future.

y. In s. HFS 46.04 (3) (intro.), it appears the last sentence should end with a colon.

z. In s. HFS 46.04 (5) (a) 5., “The Registry” should not be capitalized. This comment also applies to other provisions of the proposed rule.

aa. In Table HFS 46.05-A, the added text in the title should be capitalized to be consistent with the current title. This comment also applies to the titles for Tables HFS 46.05-B and 46.05-C.

Also, in Table HFS 46.05-A, items 1., 2., and 6., a comma should be inserted after “and.”

Also, in item 2., a space should be inserted between “48” and “credits”.

bb. In s. HFS 46.05 (1) (c) 6. b., “have 3 years to obtain the Wisconsin Child Care Administrator Credential” should be replaced with “shall obtain the Wisconsin child care administrator credential within 3 years of the effective date of this section [revisor inserts date]”.

In the note to that section, periods should be inserted after the item numbers.

ee. In Table HFS 46.05-B, item 6., “the” should be inserted before “Wisconsin department of public instruction.”

ff. In s. HFS 46.05 (2) (a) (intro.), the comma should not be stricken.

gg. In the note to s. HFS 46.05 (4) (f), “Department” should be replaced with “Department’s”.

hh. In s. HFS 46.05 (4) (j), “HFS” should follow “Table.”

ii. In s. HFS 46.06 (9) (b) 4., it may be clearer to place the underscored sentence at the beginning of the subdivision. The subdivision could then end in a colon.

- jj. In SECTION 141, a parenthesis should be inserted after “(12”.
- kk. In s. HFS 46.07 (6) (f) 2., does the ingredient strength for lip balm need to be recorded? This comment also applies to s. HFS 55.44 (6) (e) 6.
- Also, at the end of the second sentence, “insect” should be deleted.
- ll. In SECTION 164, a comma should be inserted after “(intro.)”.
- mm. In the note to s. HFS 46.11 (7) (a) 9., “by are not limited to” should be deleted.
- nn. In s. HFS 55.04 (22m), the space in “55. 42” should be deleted.
- oo. In the note to HFS 55.05 (1) (a) 5., “appendix” is not capitalized. There should be consistency throughout the proposed rule.
- pp. In s. HFS 55.05 (1) (c), semicolons for some of the subdivisions are replaced by periods. However, subs. 1. and 4. will still end in semicolons. This general comment also applies to ss. HFS 55.41 (1), (1) (g) and (4) (a) 1., 55.42 (2) (a), and 55.44 (1) (a), (2) (c), (3) (b), and (6) (f) 1.
- qq. In the treatment clause for SECTION 227, “is created” should be replaced with “are created.”
- rr. In s. HFS 55.05 (5) (c), an underscored comma should be inserted after the stricken semi-colon.
- ss. In s. HFS 55.05 (5) (i), a comma should be inserted after “ch. 961.”
- tt. In s. HFS 55.05 (6) (a), the comma following “~~but not limited to~~” should also be deleted.
- uu. In s. HFS 55.05 (7), there is no reference to licenses that are suspended. Are licenses suspended or just revoked? The title to sub. (8) also just refers to revocation rather than suspension, but the text refers to suspension. Please clarify. Also, it appears that the proposed rule may be clearer if sub. (8) preceded sub. (7).
- vv. In s. HFS 55.05 (8) (c), it appears that, in the last sentence, “in the memorandum of understanding entered into” should be deleted because current statutes limit the review to the review provided under ch. 49, Stats.
- xx. In s. HFS 55.05 (10) (a), a period and comma should be inserted after the last instance of “Stats”.
- yy. It is not clear what the purpose of the note to s. HFS 55.07 (2) (a) 3. is.
- zz. In s. 55.09 (intro.), it would be better to begin the sentence with “The following requirements apply...”.

aaa. In s. HFS 55.41 (2) (k), a period and comma should be inserted after “Stats”. Also, “the plan shall” should be inserted before “be approved by the department licensing representative.”

bbb. In s. HFS 55.41 (3) (c), the sentence should begin with “Maintain” instead of “The camp shall maintain” to be consistent with the other paragraphs.

ccc. In s. HFS 55.41 (4) (a) 6., “Department” should not be capitalized.

ddd. In s. HFS 55.43 (2) (b), “once a year” should be replaced with “once per year”.

eee. In s. HFS 55.43 (3) (e) 6., “chs” should be replaced with “~~ch~~ chs.” Also, in subd. 7., “ch.” should be replaced with “~~ch~~ chs.”

fff. In s. HFS 55.44 (1) (b), subds. 4. to 7. should begin with a verb to be consistent with the other subdivisions.

ggg. In s. HFS 55.44 (5) (a), “HFS” should be inserted after “Table.”

hhh. In s. HFS 55.44 (5) (d) 2., “1” should be replaced with “one”.

iii. In s. HFS 55.44 (7) (b) 5., hyphens should be inserted in “check in” and “check out.” Also, “procedure” should be plural.

jjj. In s. HFS 55.44 (7) (b) 6., hyphens should be inserted in “staff to child.”