



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 08-036

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

Under what authority does the department propose to directly assess forfeitures under s. HFS 159.45 (5) for violations of the asbestos certification and training rules? Is “all powers necessary to fulfill the duties prescribed in the statutes” (s. 250.04 (2) (a), Stats.) being interpreted to include that power? In the relatively few cases where agencies have such power, it is expressly stated in the statutes. Of particular pertinence, notwithstanding the broad authority given in s. 250.04 (2) (a), Stats., quoted above, the statutes specifically authorize the department to directly assess forfeitures for violations of the women, infants, and children food program statutes (s. 253.06 (5) (d), Stats.), and the radiation protection statutes (s. 254.45 (2), Stats.), but do not include similar language regarding forfeitures for violations of any other public health statutes.

2. Form, Style and Placement in Administrative Code

a. It would appear most likely that this rule will not be promulgated before July 1, 2008, on which date the Department of Health and Family Services will no longer exist. If this is correct, all references to the current department should be replaced with references to the Department of Health Services or DHS. If the rule is to go into effect earlier, additional rule provisions should be drafted to amend all references to the department in ch. HFS 159, as created by this rule, effective July 1, 2008.

b. In the table of contents for ch. HFS 159, the numbers for subchs. VI and VII are reversed.

c. In s. HFS 159.03 (3) (intro.), it would appear that “all” should be “any.” Similarly, in s. HFS 159.03 (3) (d) (intro.), “one” should be omitted, as its inclusion suggests that the department may not pursue more than one of the options.

d. The rule provides far more definitions than are called for. Many defined terms, such as “air monitoring” and “air sampling,” are obvious, and the definitions do not add anything. Many of these terms are not defined in the parallel provisions of the Code of Federal Regulations.

e. In the definition of “asbestos company,” the language beginning with “sole proprietorship” and ending with “or other entity” should be replaced with the word “person,” which is defined in the rule.

f. The definitions of “disposal bag” and “enclosure” include substantive requirements that should be placed in the text of the rule, not in the definitions.

g. In s. HFS 159.04 (59), “to” should replace the hyphen.

h. Section HFS 159.08 (1) (intro.) and (2) (intro.) should end with colons, as should s. HFS 159.12 (5) (intro.). The entire rule should be reviewed for instances in which introductory material does not end with a colon.

i. What is numbered s. HFS 159.09 (intro.) is not introductory. Consequently, it should be numbered s. HFS 159.09 (1) and what are numbered subs. (1) to (4) should be subs. (2) to (5). Similar changes are needed in ss. HFS 159.19 (6) and 159.20.

j. The rule should include a note following s. HFS 159.12 (1) indicating where to obtain a copy of the directory of accredited courses.

k. The note following s. HFS 159.12 (1) includes substantive requirements that should be placed in the text of the rule.

l. Section HFS 159.12 (2) (intro.) and (a) (intro.) should be consolidated and numbered s. HFS 159.12 (2) (intro.) and par. (a) 1. to 4. should be numbered pars. (a) to (d).

m. Section HFS 159.14 (1) should begin: “Beginning on the first day of the sixth month following publication of this order ... (revisor inserts date) ...”.

n. In s. HFS 159.15, subs. (1) (h) and (2) should be numbered subs. (2) and (3), respectively.

o. To accomplish the distinction between certification fees for asbestos companies in general and those for exterior asbestos companies, in s. HFS 159.16 (1) (a) and (b), the following changes should be made:

- The sentence, “‘Asbestos company’ includes an exterior asbestos company” should be added to the definition of “asbestos company” in s. HFS 159.04 (8).
- The last sentence of s. HFS 159.14 (2) should be omitted.

- Section HFS 159.16 (1) (a) should begin with the phrase: “Except as provided in par. (b),”.

p. Similarly, to accomplish the exception from asbestos company certification fees for local education agencies, in s. HFS 159.16 (1) (e) , the following changes should be made:

- Section HFS 159.16 (1) (intro.) should begin with the phrase: “Except as provided in sub. (2),”.
- Section HFS 159.16 (1) (e) should be renumbered sub. (2).
- The phrase “under sub. (1)” should be added at the end of the renumbered sub. (2).

q. In s. HFS 159.19 (6) (intro.), “rule” should replace “regulation” if the reference is to state administrative rules.

r. Titles are not a part of a rule, though s. HFS 159.22 (7) treats them as though they were. The paragraphs of that subsection also do not follow grammatically from the introduction. The titles can be retained or omitted, at the department’s discretion, but the text should be modified to read, for example in par. (a), “Verify that each student is ... or will attain ...” or in par. (b), “Ask each student to provide ...”. See also s. HFS 159.22 (18) (b).

s. In s. HFS 159.23 (2) (intro.), “shall accredit” should replace “accredits.”

t. The rule indicates the meaning of “HEPA” by showing it in parentheses after the term it represents is used in the text of the rule (s. HFS 159.29 (5) (f)). This is not a sufficient definition of the term. A definition should be provided in s. HFS 159.04.

u. The term “PCM,” used in ss. HFS 159.30 (2) (d) and 159.32 (8) (f), is not defined. It should be defined or, since it is used only twice, spelled out where it is used. Similarly, the term represented by “TEM” should be spelled out in s. HFS 159.32 (8) (f).

v. There is a great deal of duplication in the sections establishing training course curricula, resulting in some 30 pages of very repetitive text. It appears that common elements of certain training courses could be identified once; the requirements for individual training courses would then be the basic course elements with any additions or deletions specific to that course. For example, it appears that the various worker and supervisor training courses include many of the same elements, which could be listed in a section titled, “Basic curriculum requirements for worker and supervisor training.” The curriculum requirements for the asbestos worker initial courses, for example, would be the basic curriculum requirements for worker and supervisor training, plus any additional items required for asbestos worker training, minus any elements of the basic curriculum not needed for asbestos worker training. A second basic curriculum might be identified for inspectors, management planners, and project designers. This approach could potentially save many pages of rule text.

w. Section HFS 159.38 (2) duplicates s. HFS 159.40 (3), and so should be omitted (and s. HFS 159.38 (1) should then be renumbered s. HFS 159.38).

x. Section HFS 159.42 (1) makes incorrect use of the introduction format. In s. HFS 159.42 (1) (intro.), the phrases “is designated by the training provider of the accredited training

course” and “meets the following qualifications” should be reversed in order and the final period should be replaced with a colon; par. (a) should begin “Appropriate work experience in ...”; and par. (b) should begin “Certification in ...”.

y. The phrase “As of the effective date of this rule,” should be deleted from s. HFS 159.45 (5) (c) (note); the effect of s. 254.20 (11), Stats., is not dependent on the promulgation of this rule.

z. Section HFS 159.46 (2) appears to establish procedures for the division of hearings and appeals, which the department does not have the authority to do. Presumably, this subsection is summarizing the procedures that the division of hearings and appeals has established, in which case this should be either omitted or placed in a note.

aa. It appears that the rule is repealing the appendix to ch. HFS 159. Is this intended?

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

a. In the definition of “ACM,” the reference to sub. (9) is superfluous and should be omitted, though it appears that a separate definition of “ACM” is itself superfluous, as the acronym is included in the definition of the full term.

b. The last reference in s. HFS 159.21 (1) (a) should be “*ch.* Comm 32.” [Emphasis added.]

c. In s. HFS 159.22 (11), does “department-approved” mean accredited under subch. IV? If so, that sentence should be rewritten with that reference. Similarly, in s. HFS 159.22 (intro.), does “department-approved” mean approved under subch. V? Again, if so, it should be rewritten with that reference. See also s. HFS 159.22 (14), (15), and (16).

d. Throughout the rule, references to federal law should be to the U.S. Code. If the department wants to include references to a federal act, this can be done in a note. For example, see s. HFS 159.33 (11) (e).

e. In s. HFS 159.44 (5) (a), “s. HFS 159.45 (3)” should replace “sub. (3).”

f. In s. HFS 159.45 (3) (intro.) and (5) (c), it appears that “s. HFS 159.46” should replace “s. HFS 159.43.”

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

a. In s. HFS 159.02 (2), should “suspect” be “suspected”?

b. In s. HFS 159.03 (3) (a), “a” should be “an.”

c. Section HFS 159.05 (3) (c) should read: “The individual has completed ... and paid”

d. In s. HFS 150.06 (1), commas should follow the terms “single-family” and “non-rental.”

e. In the third note following s. HFS 159.07 (4), “number” should be inserted following “social security.”

f. In s. HFS 159.08 (2) (e), “card” is misspelled. In sub. (3), the period is missing from the second sentence.

g. Section HFS 159.20 (1) (b) (intro.) might be clearer if the language beginning with “a residential structure” were replaced with “any structure not described in par. (a).”

h. Section HFS 159.20 (1) (b) appears to indicate that *no* notice is required prior to removal of *more* than 160 square feet, 260 linear feet, or 35 cubic feet of friable asbestos from a structure other than a 1 to 4 unit residential dwelling. Is this correct?

i. Section HFS 159.20 appears to use the words “notice” and “notification” interchangeably. The rule should use one term consistently, unless distinct meanings are intended.

j. In s. HFS 159.21 (2), the word “and” should be inserted before “the printed name.”

k. In s. HFS 159.22 (2), a comma should be inserted following “tests.”

l. In s. HFS 159.24 (5) (e), “shall” should be “that.”

m. Throughout the rule, active voice should be substituted for passive voice. For example, s. HFS 159.28 (3) (b) should read: “An asbestos company may not conduct a training course if accreditation for the course is expired.”

n. In s. HFS 159.29 (7), all of the paragraphs should end with periods.

o. Is the hands-on training required in s. HFS 159.33 (13) intended to be at an active abatement site? If so, this should be stated. Compare to s. HFS 159.35 (5).

p. In s. HFS 159.37 (1) (intro.), how much college-level course work is envisioned? More guidance here would be helpful.

q. Section HFS 159.38 (1) (intro.) should begin with a phrase such as: “An individual who seeks approval as”

r. In s. HFS 159.43 (3) (u), the second “under” should be deleted and “s.” should replace “ss.”

s. Throughout ss. HFS 159.44 and 159.45, “or” should replace the hyphen in “ss. 254.20 – 254.21, Stats.”