



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 09-039

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. In s. DOC 346.01, the phrase “These rules are” should be replaced by the phrase “This chapter is.”

b. Section DOC 346.03 should begin with an introductory clause that states “In this chapter;”.

c. In s. DOC 346.04 (2) (intro.), the phrase “all of” should be inserted before the phrase “the following components.” [The entire rule should be reviewed for the appropriate use of the phrases “all of” or “any of” in introductory material so that the rule’s intent is clear. See s. 1.03 (2) (h), Manual.]

d. In s. DOC 346.13 (1) (e), the reference to the Department of Commerce should be shown in lowercase. [See also s. DOC 346.14 (7).]

e. Section DOC 346.14 (2) (intro.) should be renumbered as par. (a) and the remaining paragraphs should be renumbered accordingly. Also, in sub. (2) (b), because the introduction states that each cell shall have “all of the following,” it is unnecessary in the following subunits to include phrases such as “shall be provided in each cell” or “there shall be.” In particular, sub. (2) (b) 8. should be rewritten to read: “Light fixtures of detention strength and providing at least 30-foot candles at 30 inches above the floor....” Finally, it appears that sub. (2) (b) 6. relates to a

facility as a whole, rather than an individual cell, and should be moved to a different place in ch. DOC 346.

f. Section DOC 346.14 (3) (f) 6. should be rewritten to read: “For facilities constructed...upper bunks equipped with anti-rollout plates.” The rewritten provision will be consistent with the structure of the other subdivisions. The entire rule should be reviewed for consistent structure of listed subunits.

g. In s. DOC 346.15 (3) (a) 2., the phrase “on or” should be inserted before the phrase “after October 1, 1994.”

h. The first sentence of s. DOC 346.23 (1) should be rewritten to read: “A facility shall provide...while a juvenile is in custody.”

i. In s. DOC 346.32 (2), the paragraphs should be written in complete sentences.

j. In s. DOC 346.36 (3), both occurrences of the word “shall” should be shown in the lowercase.

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

a. In s. DOC 346.14 (7), the correct cross-references are “sub. (2) and s. DOC 346.15” and “sub. (3).” Also, the notation “s.” should be inserted before the notation “Comm.”

b. In s. DOC 346.18, the notation “HFS” should be replaced by the notation “DHS.”

c. In s. DOC 346.29 (3), the notation “sub.” should be inserted before the notation “(1).”

d. In s. DOC 346.44 (2) (d), the notation “sub.” should be replaced by the notation “par.”

e. In s. DOC 346.50 (2), both occurrences of the notation “par.” should be replaced by the notation “sub.”

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

a. In items 14 and 33 of the plain language analysis, the words “Deleted” and “Clarified” should be replaced by the words “Deletes” and “Clarifies,” respectively.

b. In the second paragraph of item F of the rule preface, the phrase “to or” should be inserted before the phrase “in adult facilities.”

c. In the fifth paragraph of the rule preface description of Illinois law, the word “on” should be inserted before the phrase “the rated capacity of the adjacent cells.”

d. The plain language analysis of the rule appears to be an exhaustive list of the substantive changes made in the rule as it lists 37 changes. However, there are some changes which appear to be substantive but are not included in this list. The following substantive changes should be included in the plain language analysis list of changes:

- (1) Section DOC 346.14 (2) (a) states that “cells shall have minimum floor area of 35 unencumbered square feet.” The current rule is 54 square feet [DOC 346.36 (3)].
 - (2) Section DOC 346.14 (2) (b) lists what items each cell must include. This new list excludes mattresses. Currently, s. DOC 346.36 (2) (c) states that cells must include mattresses and states that the mattresses must be at least three inches thick. While mattresses are included later in proposed s. DOC 346.32 (2) (a), the thickness specification is excluded.
 - (3) Section DOC 346.14 (5) (a) removes the purpose of holding cells, currently listed in s. DOC 346.36 (8). This appears to expand the purpose for which holding cells may be used.
 - (4) Section DOC 346.14 (6) (b) lists what each receiving cell shall include. It removes the light fixture requirement found in the existing s. DOC 346.36 (7) (c) 3. It appears that this may be an oversight as lighting requirements are specified elsewhere in the rule for dormitories, cells, day rooms, and holding rooms.
 - (5) Section DOC 346.16, relating to fire protection, makes two substantive changes. Subsection (1) removes the requirement that plans for fire protection and evacuation be developed in collaboration with the local fire department. Subsection (3) removes the requirement that facilities have a “self-contained breathing apparatus.”
 - (6) Section DOC 346.40 (4) expands what religious texts shall be provided to juveniles to include “other religious text.”
 - (7) Section DOC 346.44 (2) (c) expands the time interval that a juvenile in administrative segregation shall be observed from 15 minutes to 30 minutes.
 - (8) Section DOC 346.48 (6) adds a new requirement that the superintendent shall issue a written decision and instructions for appeal after the juvenile waives a hearing.
- e. The plain language analysis includes 37 changes to the existing chapter DOC 346. Most of these changes are listed in the order a reader may find the changes in the chapter. Items 17 to 23, however, are listed out of order. For clarity, the department should consider revising the order of these items so that the entire list follows in the order found in the chapter.
- f. In the table of contents for ch. DOC 346, the titles to ss. DOC 346.07, 346.05, and 346.17 should be made consistent with the titles in the text of the rule.
- g. Section DOC 346.13 creates a new list of requirements relating to facility construction plans, including juvenile portions of jails. This section also removes, from current s. DOC 346.05, the reference to s. DOC 350.04, relating to construction plans for jails. The department should ensure that there is no conflict between s. DOC 346.13 and s. DOC 350.04.
- h. In s. DOC 346.47 (5) (b), the phrase “may not be permitted” should be replaced by the phrase “is prohibited.”