



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 09-054

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. The headings in the rule summary should be replaced to match the headings listed in s. 1.02 (2) (a), Manual. For example, “Rule Content” should be labeled “Plain Language Analysis” and “Surrounding State Programs” should be “Comparison with Adjacent States.”
- b. On page 9, line 12, the second par. (e), should be relabeled par. (f).
- c. On page 15, line 7, the word “department’s” has both an underscore and a strike-through. This word should be deleted altogether as it is not included in the original language of ch. ATCP 1.

3. Conflict With or Duplication of Existing Rules

- a. In SECTION 1, the definitions of “claim filing order” and “claimant” are amended to include “depositors” under “subch. VII of ch. 126, Stats.” It does not amend the definition of “claim.” The definition of “claim” in s. ATCP 1.01 (3) should be amended to make the chapter consistent.
- b. Section ATCP 1.03 (2) (b) 3. contains an incorrect cite. Section 97.13 (3), Stats., is incorrect and should be changed to s. 97.12 (3) (a), Stats.
- c. The proposed rule adds the requirement that a person describe “*substantial harm*” in a contested case hearing request [s. ATCP 1.06 (2) (a) 2.] and an informal hearing request [s.

ATCP 1.03 (3) (a) 2.]. This requirement appears to be inconsistent with what is required under the statutes. Section 227.01 (3), Stats., defines a contested case as a proceeding where a party asserts a “*substantial interest*” that is denied or controverted, and is “*adversely affected*” by a decision or order. Section 227.01 (9), Stats., defines the “person aggrieved” as a person or agency whose “*substantial interests are adversely affected.*” It appears that the statutes require a harm that is not substantial. The department should explain why it is requiring someone to demonstrate a higher level of injury than just being “*adversely affected.*” It is suggested that the terminology in the statutes be used.

d. Section ATCP 1.25 (1) (b) is renumbered in SECTION 36. However, s. ATCP 1.25 (1) (b) is cited in s. ATCP 1.25 (6) (b). Section ATCP 1.25 (6) (b) should also be amended to reflect the renumbered citation.

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

a. The explanation of “Producer Security; Recovery Proceedings” on page 3, states that the proposed rule incorporates current procedures and terminology under ch. 126. Chapter 126, Stats., should be cited in the “Statutes Interpreted” section.

b. It is unclear why the phrase “Subject to the general order of proof under par. (a),” is added to s. ATCP 1.25 (4) (c), on page 20, line 15. Paragraph (4) (a) already states that par. (4) (c) is an exception. This phrase should be deleted as it is redundant.

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

a. It appears that the subsection “Hearing on Summary Orders” on page 3 actually refers to “summary special orders.” If so, the term “summary orders” should be replaced with “summary special orders.” If “summary orders” is a different term, then this term should be defined in the proposed rule.

b. Section ATCP 1.10 (1) (h) limits the administrative law judge’s (ALJ’s) authority to issue subpoenas by requiring the secretary’s approval first. The department should consider including this change in the explanation of ALJ authority on page 4.

c. The explanation regarding who may request hearing transcripts on page 4 misstates the current law. Under existing s. ATCP 1.16 (2), (3), and (4), any “person” may request a transcript, which includes the public. The proposed rule replaces the word “person” with “party,” which excludes the public. The explanation should explain this limitation.

d. Section ATCP 1.08 (3) adds new requirements to the auditing claims and proposed decision procedures. Because the rule content section appears to be an exhaustive list of changes, the department should consider including this in the rule content explanations.

e. Section ACTP 1.11 (1) (b) is confusing and has multiple interpretations. Specifically, may the ALJ *adopt* and *order* findings of fact, or may the ALJ only *adopt* the findings? The section should be rewritten to clarify exactly what the ALJ may do.

f. The change in s. ATCP 1.15 (2) creates an opportunity for a hearing regarding the objection to a subpoena request. Because the rule content section appears to be an exhaustive list of changes, the department should consider including this in the rule content explanations.

g. Section ATCP 1.33 (1) is a long sentence. For clarity, the department should consider adding a comma before and after the phrase “including reasonable attorney fees” on page 21, line 13.

h. It is unclear how the effective date will apply to contested cases filed before the effective date but not heard until after it. The department should consider including an initial applicability provision such as “this rule first applies to cases filed on or after...”