



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 11-044

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 introductory clause should be rewritten as follows:

An order to amend ETF 11.01 (1), 11.02 (3) and (8), 11.03 (2) (b) and (bm), (3m), (4) (b), (8) and (11), 11.04 (2), (4) (intro.), (f) and (h), and (8), 11.05 (4) and (7), 11.06 (1), 11.07 (1), 11.08 (2) (b) 1., 11.09 (1) and (3) (intro.), 11.12 (1) (a), 11.13 (3), 11.14 (2) (c) and (4) (intro.), and 11.16 (4); and to create ETF 11.02 (3m), 11.03 (9) Note, (14), (15) and (16), 11.04 (4) (i), (j) and (k), 11.08 (2) (f) and (g) and (5m), 11.09 (3) (c), 11.12 (8), and 11.13 (1) (h), relating to the ETF appeals process.

Note that the above introductory clause incorporates the changes to SECTIONS 25, 26, and 28, discussed below.

b. In the summary of the rule, the department should review the statutes interpreted section; it appears the department may have intended to refer to s. 40.03 (6) (i), Stats., rather than s. 40.03 (6) (j), Stats. Also in this section, an “and” should be inserted after “(8) (f)” and after “40.80 (2).” In general, “and” should be inserted prior to the last reference to a statutory subunit when two or more such subunits are referenced in a sequence. Likewise, in the statutory authority section, the statutes should be cited as: “Sections 40.03 (2) (i), (ig) *and* (ir), and 227.11 (2), Stats.” (Emphasis added.) [The ch. 227 citation could be stated more explicitly as s. 227.11 (2) (a), “Stats.”]

c. In the fiscal estimate for the rule, the department should insert “district” after “sewerage.”

d. Throughout the rule, the department inserts the phrase “of employee trust funds” after “department.” However, s. ETF 11.02 provides that words used in ch. ETF 11 have the same meaning as in s. 40.02, Stats. Since the term “department” is defined as the Department of Employee Trust Funds in s. 40.02 (19), Stats., “department” may be used in this rule chapter without adding the phrase “of employee trust funds.”

e. The subsections of s. ETF 11.02 amended in SECTIONS 3 and 4 are out of order. Section ETF 11.02 (3m) should precede s. ETF 11.02 (8).

f. In s. ETF 11.02 (3m), “coordinator” should not be capitalized.

g. In s. ETF 11.02 (8), the underscored material appears to constitute a substantive provision that should not be incorporated in a definition. [s. 1.01 (7) (b), Manual.]

h. Throughout the rule, periods should not be included in stricken material when the period should be retained. Rather, the department should place underscored material before an existing period. [s. 1.06 (4), Manual.]

i. Throughout the rule, the phrase “shall not” should be replaced by “may not.” [s. 1.01 (2), Manual.]

j. The word “Stats.” should be capitalized throughout the rule. [s. 1.07 (2), Manual.]

k. In the text of s. ETF 11.03 (2) (bm), the “(bm)” should be preceded by “ETF 11.03 (2).”

l. In ss. ETF 11.03 (9) (Note) and 11.16 (4) (Note), it is not necessary to use the lower case for “department of employee trust funds” as capitalization is the norm for postal address titles.

m. In s. ETF 11.03 (9) (Note), “Individual” should be inserted before “Personal” in the reference to form ET-7406.

n. Section ETF 11.03 (16) should have a title, for consistency with the other subsections in this section. [s. 1.05 (1), Manual.]

o. The treatment clause to SECTION 16 should be rewritten to read: “ETF 11.04 (4) (intro.), (f), and (h) are amended to read:”. In s. ETF 11.04 (4) (intro.), the department substitutes “shall” for “may.” Is it appropriate to create a mandatory obligation for each paragraph in subsection (4)? For example, par. (b) reads “Issue, quash and enforce subpoenas.” Is it the department’s intent that each of these activities must take place in every hearing? If not, it may be more appropriate to retain the use of “may” or otherwise bifurcate the paragraphs of sub. (4) into mandatory and permissive acts.

p. Throughout the rule, the department should replace references to “this rule” with internal references, consistent with s. 1.07 (2), Manual.

q. In s. ETF 11.04 (4) (i), a “(4)” should be inserted before the “(i)”.

r. To avoid unnecessary renumbering of current rule provisions, it is suggested that the language in SECTION 25 be deleted, so that s. ETF 11.08 (6) remains sub. (6), and the language in SECTION 26 be created as s. ETF 11.08 (5m) and placed in SECTION 25 with the following treatment clause: “ETF 11.08 (5m) is created to read:”. If this change is made, SECTION 27 would be renumbered SECTION 26, and so forth. [s. 1.03 (g) and Note, Manual.]

s. Throughout the rule, statutory references should conform to s. 1.07 (2), Manual. For example, in s. ETF 11.09 (1), the department should refer to “ch. 40, Stats.,” rather than “Wis. Stat. ch. 40.”

t. In SECTION 28, the treatment clause should refer to s. ETF 11.09 (3) (intro.).

u. Section ETF 11.12 (8) should have a title, for consistency with the other subsections of this section. [s. 1.05 (1), Manual.]

v. In s. 11.16 (4), it is not necessary to insert a par. (a) unless two or more paragraphs exist. In the Note following this provision, the word “present” should be deleted. If the department’s address changes, the Note should be updated to keep that information current.

w. The effective date of the rule should be included in a numbered SECTION. [s. 1.02 (4), Manual.]

x. The department should review the economic impact analysis to determine whether the element of the analysis regarding contact with various entities has been satisfied. Also, note that the Department of Administration has developed a combined template for fiscal estimates and economic impact analyses. It is available at: http://legis.wisconsin.gov/lc/adminrules/files/AR_FiscalEstimate-DOA-2049.doc.

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

a. In the last sentence of s. ETF 11.03 (2) (b), the department may wish to substitute a more specific noun for “someone.”

b. In s. ETF 11.03 (11), the word “advise” on line 6 should be “advising.”

c. In s. ETF 11.03 (14), “will” should be changed to “shall.” Also, how will the department determine when it is “necessary for the convenience” of parties to an appeal to meet in an alternative location?

d. In s. ETF 11.03 (15), a hearing examiner “shall grant” a request for expedited appeal on account of financial hardship. How will the department define the level of hardship that will trigger a mandatory approval of a request for an expedited appeal? Should the hearing examiner instead have permissive authority (“may grant”) to grant requests for expedited appeals? If no agreement to an expedited appeal is reached, and a hearing examiner issues an order approving a request, is it necessary to indicate that the order approving the request will also specify the terms of the expedited process?

e. In s. ETF 11.04 (4) (h), on the second-to-last line, “hearing” should be followed by a comma.

f. In s. ETF 11.04 (4) (k), should the word “appeal” replace “hearing”?

g. In s. ETF 11.07 (1), “informally disposed of” should read “disposed of informally.”