



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 16-055

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 December 2014.]

2. Form, Style and Placement in Administrative Code

a. NUMBERING. Please note that LRB drafting convention is generally to avoid repealing a section and reusing the existing section numbers. This is to avoid confusion and signal to readers that the rule has been rewritten.

b. REFERENCE TO PRISON INDUSTRIES. The rule uses the phrase “prison industries” throughout. “Prison industry” is defined within the rule as an industry established under s. 303.01, Stats., for inmate employees to manufacture products or components or provide services. It is unclear whether use of the phrase “prison industries” collectively refers to the various individual industry types (textiles, signage, etc.) or whether it refers more generally to a centralized prison industries *program*. This should be clarified.

c. As it relates to s. DOC 313.01, please note that drafting convention is generally to avoid “purpose” or “intent” statements.

d. In s. DOC 313.03 (3), the definition of “Industries director” should indicate that the term means the director appointed by the secretary under s. 303.01 (9), Stats., or “his or her” designee.

e. In s. DOC 313.03 (4), “Industries Supervisor “ Means...” should be altered to read “Industries supervisor” means...”.

f. In s. DOC 313.04 (3), the rule provides that “prison industries” may acquire new or additional customers. Is this meant to allow each type of prison industry (e.g., wood furniture,

signage, etc.) to acquire customers independently? If so, the language should state that “A prison industry” may....

g. In s. DOC 313.06 (1) and (2) (b), the language refers to “inmates” applying for positions or selection of “inmate employees”. Drafting convention is to use the singular. [s. 1.01 (9) (e), Manual.] Section DOC 313.06 (1) should state: “An inmate may apply for a position in a prison industry that is available at the institution in which the inmate resides.”. Section DOC 313.06 (2) (b) should state: “Consider the following criteria in the selection of an inmate employee.”.

h. In s. DOC 313.06 (2) (b) 1., the rule requires the industries supervisor to consider “education requirements” when selecting an inmate employee. Does the phrase “education requirements” refer to consideration of the fact that an inmate performing the particular job must receive specialized training and education to perform the job? Or, does it refer to possessing certain educational credentials (e.g., high school diploma or GED)?

i. In s. DOC 313.08, subsections numbered (2) and (3) appear twice. The number of the subsections should be changed.

j. In s. DOC 313.10, the rule language states that staff shall report rule violations in accordance with “ch. Ch. DOC 303”. The duplicate language and excess punctuation should be removed.

k. In s. DOC 313.12 (2), the rule language states that pay adjustments based on “prison industries written policy” may be added to original base wage. Who creates the policy? Is this established by the industries director? Or does each individual prison industry create its own policy?

l. In s. DOC 313.17, the rule language states that PSPIEC programs are not subject to ss. DOC 313.7. This should read “s. DOC 313.07”.

m. In s. DOC 313.17 (1), the rule provides that an employee working in a PSPIEC program shall be paid a wage comparable to that paid in the private sector “or, as a minimum, the federal minimum wage”. Is this language intended to mean that an employee must be paid either the prevailing wage or the federal minimum wage, *whichever is higher*? This language should be clarified.

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

a. In s. DOC 313.04 (3), the rule provides that “prison industries may acquire new or additional customers”. However, there are limitations on who these industries may sell to contained in s. 303.01 (1) (b) and (d), Stats. The language should indicate that prison industries may acquire new or additional customers “subject to s. 303.01 (1) (b) and (d), Stats.”.

b. In s. DOC 313.12, sub. (1) states that inmate employees shall be paid for “actual hours worked”. However, subs. (4) to (7) appear to allow inmate employees to be paid when they are not working, or in a manner other than hourly. For example, sub. (1) could state: “Except as provided in subs. (4) to (7), inmate employees shall be paid for actual hours worked.”.

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

Item 6. of the plain language analysis indicates that the rule includes among the selection criteria “documented security concerns, including assaultive history”. However, the actual language of s. DOC 313.06 (2) (b) 6. provides that the selection criterion for consideration is “security concerns”. The proposed rule should be changed in one of the following ways: (a) the plain language analysis should be changed to reflect the actual rule language; or (b) the language of s. DOC 313.06 (2) (b) 6. should be changed to explicitly read “Documented security concerns, including assaultive history”.