



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 23-039

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

In the agency’s citation to statutory authority, the citation to s. 227.14 (1), Stats., may be more appropriately cited in the statutes interpreted section.

2. Form, Style and Placement in Administrative Code

a. The treatment of SECTIONS 5 through 13 could be included in one SECTION, as those SECTIONS all affect subunits of the same rule section with the same treatment, and any intervening subunits are unaffected. [s. 1.03 (2) (c) 2., Manual.] The agency could make similar changes to SECTIONS 19 and 20 and 22 and 23.

b. Similarly, the treatment of SECTIONS 1 and 2 could be included in the same SECTION, as those rule sections are consecutively numbered and are affected in their entirety by the same treatment. [s. 1.03 (2) (b) 1., Manual.] The agency could make similar changes to the following SECTIONS: 27 and 28; 35 and 36; 48 through 50; 53 and 54; 55 and 56; 59 through 61; 110 and 111; and 147 and 148.

c. The rule treatment clause for SECTION 35 should clarify that s. DFI-Bkg 11.13 is being renumbered *and* amended, as renumbered. [s. 1.04 (7), Manual.]

d. In SECTION 43, the rule text omits the titles of several sections, but does not show those titles in stricken text. The agency should clarify the treatment of those titles. [s. 1.04 (4) (a), Manual.]

e. In SECTION 76, is there a reason that the agency reversed the listing of the statutes addressing merger, instead of simply correcting the citation to s. 183.1021, Stats.?

f. In SECTION 94, “Violate” should be shown in underscored text.

g. In SECTION 103, the agency should show more clearly that the citation to s. 422.202 (2s), Stats., is added text.

h. Does the rule need to use and define “FDIC”? The rule uses the terms “FDIC” and “federal deposit insurance corporation”. Acronyms are generally disfavored except for where they improve readability. [s. 1.08 (2), Manual.]

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

a. The agency should ensure proper spacing when text is added or deleted throughout the rule.

b. Is the conduct listed in s. DFI-Bkg 43.01 (1) and (2) meant to be an exhaustive list of the conduct that constitutes improper, fraudulent, or dishonest dealing? If not, SECTION 70 could state that improper, fraudulent, or dishonest dealing *includes* the conduct enumerated in the rule. Additionally, the agency may wish to add the Oxford comma to the section title to match the amendment to the rule text.

c. The permissible different actual process of collection in SECTION 72 could be clarified.

d. In SECTIONS 81 to 83, is there a difference between a trust fund account and a trust checking account?

e. It may be helpful to redraft SECTION 83 in the active voice to clarify who is prohibited from giving third party payment processors authority to withdraw funds. [s. 1.05 (1) (d), Manual.] For example, the rule could be amended to state that third party payment processors may not withdraw funds from a licensee’s trust account or that a licensee may not give third party payment processors the authority to withdraw funds from the licensee’s account.

f. While not an issue created by the rule, the agency may wish to improve clarity by using a term other than “licensee” in s. DFI-Bkg 75.03 (3) through (7). For purposes of that chapter of the administrative code, “licensee” is a defined term that means a person holding a license under s. 138.14, Stats., but the rule also uses the term to refer to a person holding a license under s. 138.09, Stats.