



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 19-092

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. In the rule caption’s listing of amended provisions, the designation “(intro.)” should be inserted after the listing of s. DHS 131.25 (6) (b). Also, in the listing of created provisions, the phrase “and (Note)” should be inserted after the listing of s. DHS 131.39 (8).

b. In the rule summary’s listing of related statutes or rules, consider citing other provisions that are cited in the rule, such as ch. 443, Stats., and s. SPS 361.05 (1).

c. In the rule summary’s description of existing policies that are relevant to the proposed rule, in the introduction to those policies, the abbreviation “s.” should be revised to “ch.”.

d. SECTION 5 of the proposed rule should be separated into five SECTIONS: (1) to amend s. DHS 131.18 (4); (2) to amend s. DHS 131.20 (1) (a); (3) to amend s. DHS 131.21 (2) (d); (4) to amend s. DHS 131.25 (6) (a) 1. and (b) (intro.); and (5) to amend s. DHS 131.35 (1) and (4). Rule provisions may be treated together in one SECTION only in two circumstances: (1) rule sections that are consecutive and are affected in their entirety by the same treatment; or (2) subunits of one rule section that are affected by the same treatment and for which any intervening subunits are unaffected. [s. 1.04 (2) (a) 1. and 4., Manual.]

e. In s. DHS 131.35 (1) and (4), both instances of the phrase “effective date of this rule” should be revised to “effective date of this section [LRB inserts date]”. [s. 1.01 (9) (b), Manual.]

f. SECTION 6 of the proposed rule should be separated into two SECTIONS: (1) to repeal s. DHS 131.35 (5); and (2) to repeal s. DHS 131.37 (2) to (4).

g. In the treatment clause for SECTION 15 of the proposed rule, the underscoring should be removed.

h. In s. DHS 131.39 (5) (c) 1., the following comments apply:

- (1) The period that is shown with a strike-through after the strike-through of the word “month” should be removed. The period is properly preserved and shown after the underscored word “month”. [s. 1.06 (4), Manual.]
- (2) The acronym “NFPA” is used, but that term is not defined in the current or proposed rule. A definition should be created in s. DHS 131.35 for that acronym, as it is also used elsewhere in the rule. Additionally, the current text of s. DHS 131.35 (3) should be amended to strike-through the parenthetical “(NFPA)”, as that does not create a proper definition. [s. 1.01 (6) and (8), Manual.]
- (3) The provision incorporates the NFPA 72-2013 edition, which appears to be separate from the NFPA 72E standard that is already incorporated in subd. 2. Materials may, in certain circumstances, be incorporated or updated with the consent of the Attorney General, but that action is not indicated in the proposed rule. The rule summary should be revised to include a comment on compliance with that requirement. [s. 227.21 (2) (a), Stats.; s. 2.08 (4), Manual.]

i. In the treatment clause for SECTION 28 of the proposed rule, the designation “(intro.)” should be inserted after “(a)”. The designation should also be inserted in the rule caption’s listing of affected provisions.

j. SECTION 29 of the proposed rule should be separated into two SECTIONS: (1) to create s. DHS 131.39 (8) and (Note); and (2) to create ss. DHS 131.40 to 131.42.

k. In s. DHS 131.40 (1) (a), the abbreviation “s.” should be inserted before “SPS”. Also, it appears “(1)” should be inserted after “361.05”.

l. In s. DHS 131.40 (3), the material in par. (b) 2. c. should instead be designated as par. (c). The subject of that provision, which requires that “Fees shall be remitted at the time the plans are submitted”, does not relate to the subject under par. (b) 2., which addresses the number of sets of construction documents that must be submitted.

m. In s. DHS 131.40 (9), the phrase “but not limited to” should be removed. [s. 1.01 (9) (f), Manual.]

n. In s. DHS 131.42 (1), the abbreviation “s.” should be inserted before “SPS”.

o. In s. DHS 131.42 (3) (title), only the first word should be shown with an initial capital letter. The initial capital letters after the first word should be revised to solid small capital letters. [s. 1.05 (2) (b), Manual.]

3. Conflict With or Duplication of Existing Rules

a. In s. DHS 131.13 (12m), the proposed rule creates a definition of “nursing assistant”, but that term is not used anywhere in the proposed rule or under the current rule. Additionally, it is unclear whether there is a difference between a “nursing aide”, as defined currently in s. DHS 131.13 (12), and “nursing assistant”, as defined in the proposed rule. Did the department intend to delete “nursing aide” and replace that term with “nursing assistant”?

b. In s. DHS 131.40 (1), the definitions in pars. (b) to (d) should be removed, as those definitions are already given in s. DHS 131.35, and apply to the subchapter. Also, as par. (a) would then be a solitary paragraph, it should be merged with the introduction for sub. (1).

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

a. In s. DHS 131.39 (5) (c) 1. (Note), it appears that the reference to “2012 Life Safety Code” should be corrected to “NFPA 72 National Fire Alarm and Signaling Code, 2013 edition”.

b. In s. DHS 131.40 (8) (a), the cross-reference to s. DHS 131.40 appears to be incomplete, as “131.40” is the section within which the provision is already located. Should the cross-reference be revised to an internal citation, such as “sub. (3)” or a different citation, such as “s. DHS 131.41 (1)” or “ch. DHS 131”? The cross-reference should be reviewed and revised to cite the correct intended provision.

c. In s. DHS 131.41 (2) (a), the cross-reference to ch. DHS 131 may be incomplete, as that chapter is the chapter within which the provision is already located. Should the cross-reference be revised to the internal citation format, “This chapter.” or “This subchapter.”? Or could specific provisions within the chapter be identified? The cross-reference should be reviewed and corrected to either follow proper format or to identify specific provisions.

d. In s. DHS 131.42 (3) (b), consider inserting a cross-reference at the end of the second sentence to “under s. DHS 131.40 (8)”.

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

a. In the rule summary’s description of existing policies that are relevant to the proposed rule, within the second sentence of the “Patient assessment” section, the word “nurses” should be changed to “nurse” to be grammatically correct and to match the language of the rule.

b. Section DHS 131.21 (2)(d) references “working days”, but s. DHS 131.40 (4) (a) references “business days”. Should these be modified for consistency?

c. In s. DHS 131.40 (4) (c) and (d), the material that provides that a conditional approval “will” be granted or denied is confusing. When “will” the approval be granted or denied? Should “will” be changed to “shall”?

d. In s. DHS 131.40 (8) (b), it appears that the general reference to “fees” would include the fee under s. DHS 131.42 (3) (b), for permission to start construction. To avoid confusion, consider specifying whether or not that fee is included in the requirements of this provision.

e. In s. DHS 131.41 (2) (c), the beginning and ending quotation marks should be removed, and the word “per” should be revised to “under”.

f. The material in s. DHS 131.42 (3) (a) is confusing. Is the \$250 fee for a miscellaneous plan or for plan review and inspection? Could the second and third sentences of that material be combined for clarity?