



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-135

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.]

1. Statutory Authority

In its plain language analysis, the department refers to s. 50.36 (1m), Stats., but it is not clear if the department intends for the proposed rule to satisfy the requirement within s. 50.36 (1m) (a) 2. and (c), Stats., that the department shall promulgate rules to repeal and recreate ch. DHS 124. Ordinarily, existing material should be rearranged and renumbered only when necessary, as described in s. 1.055 (1) of the Manual, but, given the explicit reference to repeal and recreation within s. 50.36 (1m), Stats., should the department consider repealing and recreating the entirety of ch. DHS 124 in order to resolve any ambiguities about the statutory requirements?

2. Form, Style and Placement in Administrative Code

a. The enumeration of provisions treated by the proposed rule provides that “DHS 124.131” is repealed and recreated, but the rule text repeals and recreates s. DHS 124.31.

b. Section DHS 124.02 (10) should be renumbered, as definitions are arranged alphabetically. [s. 1.01 (7), Manual.]

c. In s. DHS 124.30 (3) (intro.), consider using the phrase “all of the following” after the word “with”. [s. 1.03 (3), Manual.]

d. Section DHS 124.31 should be reviewed, as there are two subsections in the rule text numbered s. DHS 124.31 (2).

e. Use of appropriate formatting for titles should be reviewed throughout the proposed rule. [See s. 1.05 (2), Manual.]

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

a. The reference in s. DHS 124.29 (1) (a) should be reviewed for accuracy. Additionally, in this provision and elsewhere in the proposed rule, the department appears to make several incorporations by reference. The department should address s. 227.21 (2), Stats., regarding consent of the Attorney General, in its analysis of the proposed rule.

b. The material in s. DHS 124.29 (3) (c) refers to fees that must be remitted to the department in order for certain department action to occur. Should the department include a reference to s. DHS 124.31 to clarify which fees must be remitted?

c. In s. DHS 124.29 (6), the reference to s. DHS 124.31 (4) (d) should be reviewed; as repealed and recreated by the proposed rule, the latter provision does not exist.

d. In s. DHS 124.29 (8) (a), the cross-reference to s. DHS 124.29 should be reviewed. Should the reference be “this section” or a more specific citation?

e. In s. DHS 124.30 (3) (a), “Ch. DHS 124.” should be indicated as “This chapter.” to begin the sentence and make the appropriate internal cross-reference.

f. In s. DHS 124.31 (1), is the reference to sub. (3) accurate and sufficient? The fee table based on project dollar value is specified in sub. (2), while sub. (3) refers to additional fees. Is the fee for miscellaneous plans under sub. (3) (b) an exception to the fee determination under sub. (1)?

g. In SECTION 11 of the proposed rule, the correct cross-reference is to “par. (b) 1.”.

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

a. It is unclear if a hospital is required to meet the criteria in both s. DHS 124.02 (2) (a) and (b) in order to receive a waiver or variance, or if meeting the requirements in either par. (a) or (b) is sufficient.

b. In s. DHS 124.31 (2) (a) 2., the comma after the word “or” should be deleted.