



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 07-029

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

a. Section Comm 10.010 should be redrafted as follows:

Comm 10.010 Purpose. The purpose of this chapter is to:

- (1) In accordance with s. 101.02 (15), Stats., provide fire and life safety...dispense them.
- (2) Comply with s. 101.09 (3), Stats.
- (3) Comply with the flammable and combustible liquid related... (a) to (h).

b. In s. Comm 10.020 (5) (a) and elsewhere in the rule where appropriate, substitute “Under” for “Pursuant to”. In par. (b), substitute “This chapter applies” for “The rules of this chapter apply”. In sub. (7) (a), substitute “any provision” for “any rule” and “the provision” for “the rule”. In par. (b), substitute “provisions in” for “sections of”. In par. (c), substitute “provision” for “rule” in two places. In sub. (9), what does “unless specifically stated in the administrative rule” refer to? Should it be “unless specifically provided for in a provision in this chapter”?

c. In s. Comm 10.050 (intro.), delete “the following definitions shall apply” (i.e., it should read: “In this chapter.”).

d. In sub. (3), substitute “meaning given in” for “same meaning as”. Similar definitions in the rule should be reviewed for this format.

e. In sub. (9), delete “, for the purposes of this chapter.”.

f. In s. Comm 10.050 (43), the phrase “the effective date of this rule” is used. Where this format is used, the word “section” or “chapter” should be used rather than the word “rule”.

g. Section Comm 10.050 (44) provides that an existing tank system means a tank system used to contain an accumulation of regulated substances or for which installation commenced, prior to the effective date of the rule or prior to another “date specified by the department.” The language authorizing the department to arbitrarily determine what constitutes an existing tank system should be deleted. Determining when a tank system is an existing tank system presumably will have important consequences regarding the applicability of ch. Comm 10. Any redetermination of the date by which a tank system becomes an existing tank system should be accomplished through the rule-making process.

h. Section Comm 10.050 (52) defines the term “heating, space”. The actual term appearing in the rule is “space heating”. Thus, the term “space heating” should be defined in its appropriate alphabetical order. The entire definitional section should be reviewed for this problem.

i. In sub. (78), substitute “‘Pier’ or ‘dock’” for “Pier”.

j. In s. Comm 10.050 (81), the last sentence should be contained in a note to the rule.

k. In s. Comm 10.050 (82m), the quotation mark at the end of the provision should be deleted.

l. In s. Comm 10.050 (117), the word “would” in the last sentence should be replaced by the word “will”.

m. In s. Comm 10.100 (1) (a) (intro.), delete “as provided”. In subd. 4., combine subd. pars. a. and b. (i.e., the provision should read: “4. Adding leak...require plan review. A certified installer is not...leak detection). The same comment applies to subd. 7. (combine subpars. a. to c. so that the provision begins “7. Converting a full-service...” and ends with “authorized agent for inspection of the system.”). In sub. (2) (c), combine subds. 1. and 2. so that the provision begins “(c) A plot plan, drawn to a minimum scale...” and ends “1,200 feet of the tank, piping or dispenser.”. In sub. (4) (a), there is no subd. 2. so delete “1.”.

n. In s. Comm 10.100 (3) (c) 3., the phrase “shall not be construed as” should be replaced by the phrase “is not”. In par. (c) 5., the phrase “shall be responsible for completing and signing” should be replaced by the phrase “shall complete and sign”. The entire rule should be reviewed for similarly amending statements that someone is “responsible” for completing a task.

o. In s. Comm 10.110 (2) (intro.), the phrase “all of” should be inserted before the phrase “the following”. For the most part, the rule clearly identifies whether all or any part of various lists of requirements should be met. The rule should be reviewed to ensure that the reader will understand whether all or any of the requirements in a list must be met.

p. In s. Comm 10.110 (3) (f) and (g), in order to parallel the form in pars. (a) to (e), delete “Converting” and substitute “Where there is a conversion”.

q. In s. Comm 10.115, (1) (a), substitute “This chapter” for “The rules”. In sub. (2) (a) 3., substitute “This chapter is” for “The rules of this chapter are”. In sub. (3) (intro.), the phrase “shall have the authority to” should be replaced by the word “may”. In sub. (4) and (5), substitute “It is” for “It shall be”.

r. In s. Comm 10.115 (3) (c), the introduction should begin as subdivision 1., subdivisions 1. to 5. should be renumbered subd. pars. a. to e., and subdivision 6. should be renumbered as subdivision 2. The cross-reference in the introduction should be renumbered accordingly.

s. In s. Comm 10.190 (2) (a), the phrase “these rules” should be replaced by an appropriate cross-reference.

t. In s. Comm 10.190 (6) c) 2., it appears that “under this section” should be “under this subsection”.

u. In s. Comm 10.330 (3) (b), combine subds. 1. and 2. so the provision reads: “(b) Tank supports shall be capable of...full tank. This structural requirement shall be confirmed...design standard.”.

v. In s. Comm 10.350 (3), there should be titles to pars. (a) to (f) since there are titles to pars. (g) to (o).

w. In s. Comm 10.350 (3) (g), the use of the phrase “newly installed storage tanks” is vague. A precise date should be used to tell the reader to which installed storage tanks the provision applies. [See also sub. (4) (b).]

x. In s. Comm 10.400 (12) (a), the introductory material should be numbered as subd. 1. and the remaining subdivisions should be renumbered accordingly.

y. In s. Comm 10.410 (7) (a), there should be a space in “par.(d)” (should be “par. (d)”). This spacing problem appears elsewhere in the rule (see, e.g. s. Comm 10.927 (4) and (5)).

z. In s. Comm 10.510 (4) (a) 4., “section” should be “s.”. Also, in subds. 2. and 3., the phrase “in addition to the requirement under subd. 1.” is unnecessary and should be deleted.

aa. In s. Comm 10.515 (3) (a) 3., the hyphen should be replaced by the word “to.”

bb. In s. Comm 10.520 (3) (c) 2., the phrase “for between 121 days and 180 days” should be replaced by the phrase “for 121 to 180 days.” [See also subd. 3. (intro).]

cc. In s. Comm 10.610 (1) (e) 7. b. and c., the first occurrence of each hyphen in the subdivision paragraphs should be replaced by the word “to.”

dd. In s. Comm 10.630 (2) and (3), there is a par. (a), but no par. (b). These provisions need to be renumbered (e.g., in sub. (2), delete the title and make subds. 1. to 3., pars. (a) to (c),

with appropriate internal renumbering). Also, the title to current sub. (3) (a) 8. should be deleted.

ee. In s. Comm 10.900 (1) (intro.), “This section” should be “This subchapter”. Also, par. (d) 1. should simply read “tank wagons”.

ff. In s. Comm 10.903 (4), is there a specific statutory definition or definitions of “bodily injury” that can be cross-referenced here? The phrase “has the meaning given to this term by applicable Wisconsin statute” is too general and not very helpful. The same need for more specificity, if possible, applies to the first sentence of sub. (13).

gg. In s. Comm 10.910 (6), the reference to “subs. (2) or (3) and (4)” needs to be clarified. Is this intended to mean, for example, “sub. (2) or (3) and sub. (4)”?

hh. In s. Comm 10.925 (4), the phrase “this rule” should be replaced by an appropriate cross-reference.

ii. In s. Comm 10.933 (4), par. (c) does not follow from the introduction and should be restructured. If restructured, the cross-references in subs. (6), (7), and (8) should be renumbered accordingly.

jj. In s. Comm 10.940 (1) (a), “Except as otherwise provided” in what or by whom? This should be clarified.

kk. In s. Comm 10.945 (2) (a) and (j) (intro.), substitute “to” for “through”.

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

a. In s. Comm 10.020 (6) (i) to (L), the cross-references are incorrect and, in any event, the phrases “as defined under...” should be deleted. [See also s. Comm 10.900 (1) (d) 1.] In par. (q), the cross-reference should read “section 307 (b) or 402”.

b. In s. Comm 10.050 (16), the word “chapter” should be replaced by the notation “ch.” [See also sub. (33).] In sub. (116), appropriate cross-references should be included. [See also the note to sub. (129).]

c. In s. Comm 10.230 (9), “s. Comm” should be “ss. Comm”.

d. In s. Comm 10.240 (1) (b), “s. Comm” should be “ss. Comm”. In sub. (2) (c), “ss.” should be “s.”.

e. In s. Comm 10.250 (2) (b) 2., the second occurrence of the notation “Comm” should be deleted.

f. In s. Comm 10.300 (7) (d), the word “sections” should be replaced by the notation “ss.”

g. In s. Comm 10.320 (1) (e), the phrase “of this chapter” is unnecessary and should be deleted.

- h. In s. Comm 10.615 (7) (a), the notation “pars.” should be replaced by the notation “par.”.
- i. In s. Comm 10.640 (3) (d), the notation “subs.” should be replaced by the notation “pars.”.
- j. In s. Comm 10.913 (2) (d), to what does the phrase “in both cases” refer? Appropriate cross-references should be used.

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

- a. The preface to the rule should include a date by which comments are expected to be received by the department.
- b. In Table 2.43, a phrase is repeated in the first note to the table.
- c. In s. Comm 10.050 (56), who will determine that a building is not considered expendable?
- d. In sub. (123), a reference is made to “Class IIIB liquids”. Other provisions of the rule also refer to certain Class liquids. However, the rule does not define or refer to a table of these items. Will these terms be understood by the reader?
- e. In s. Comm 10.410 (7) (d) 1., what are “effective controls”?
- f. In s. Comm 10.927 (2) (a), a comma should be inserted after the phrase “excluding refunded issues”.