



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 07-069

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.]

1. Statutory Authority

- a. References to s. 182.0715 (2r), Stats., should be changed to s. 182.0175 (2r), Stats., to reflect the drafting error that was corrected by the revisor.
- b. Consider adding a reference in the rule summary to the general agency rule-making authority under s. 227.11, Stats.
- c. The cite to s. 101.02 (22) (e), Stats., in s. Comm 5.12 (4) (b) is in error.

2. Form, Style and Placement in Administrative Code

- a. The rule summary section should include sections on the effect on small business, the agency contact person, and the place where comments are to be submitted and the deadline for submission, even if those sections only summarize the more detailed notice of public hearing and regulatory flexibility analysis. [See s. 1.02 (2) (a), Manual.]
- b. The text of s. Comm 5.12 (2) (a) (intro.) is not an appropriate introductory passage because it does not grammatically lead the reader into the following list. [See s. 1.03 (8) Manual.] Therefore, subs. 1. to 7. should be changed to pars. (b) to (h); the subdivision paragraphs under these headings should be changed to subdivisions; par. (b) should be renumbered to par. (i); and internal references in pars. (a) and (b), and elsewhere in the proposal where applicable, should be changed accordingly. Alternatively, s. Comm 5.12 (2) (a) (intro.) could be reworded as an appropriate introductory clause.

c. In the note following s. Comm 5.12 (2) (a) (intro.), change the references to “point” and “points” to “subdivision” and “subdivisions” or “paragraph” and “paragraphs” depending on how the previous comment is resolved.

d. In s. Comm 5.12 (5) (a), as written, the requester can be anyone, not only someone aggrieved by the administrative assessment. Is this the department’s intent?

e. In s. Comm 5.12 (5) (a), after the word “forfeiture” add “issued under this section.”

f. In s. Comm 5.12 (5) (d), change “notice of administrative forfeiture is incorrect” to “assessment of forfeiture should be overturned.”

g. Section Comm 5.12 (7) (d) should be changed to allow 30 days to make the request for a contested case hearing after the issuance of the administrator’s written decision, not 30 days following the issuance of the forfeiture notice. Also, is it the department’s intent to allow a person to forgo the review by the administrator and go directly to a contested case hearing? This should be clarified.

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

a. Uniform wording should be used throughout s. Comm 5.12 (5) and the rest of the proposal to refer to the proceeding which can be initiated under that subsection. In various places the phrases “forfeiture appeal,” “contest the assessment,” and “request to review,” for example, are used to refer to the same proceeding.

b. In s. Comm 5.12 (2) (a) 1. (intro.), the word “by” should be replaced by the phrase “assessed against.” This change should be made throughout sub. (2). Also, in sub. (2) (a) 7. (intro.), the word “a” should be inserted before the phrase “cross connection control tester.”

c. Section Comm 5.12 (5) provides a procedure to contest the assessment of a forfeiture. This follows the mandate in s. 145.12 (5) (b) 4., Stats. However, s. 145.12 (5) (b) 3., directs the department to promulgate rules specifying the procedure for contesting an order issue for an alleged violation. Thus, s. Comm 5.12 (5) should be rewritten to include not only the challenge of a forfeiture assessment, but also a method to contest the underlying order issued for an alleged violation.

d. Section Comm 5.12 (5) (b) should be clarified. This paragraph need not refer to assessments being sustained as a person contesting an assessment would not request this for relief.

e. In s. Comm 5.12 (5) (c), it would be helpful to provide the address of the administrator of the Safety and Buildings Division.

f. The reference to the “review” in s. Comm 5.12 (6) (a) is not sufficiently specific. What event in this process constitutes the termination of the “review”?

g. In s. Comm 5.12 (7) (b) “the assessment of” should be removed.

h. In s. Comm 82.30 (11) (h) 1. f, the word “per” should be replaced by the phrase “provided in.”

i. Throughout the rule, references to “the” assessment or “the” request for review or “the” review should be changed to “an” unless previously identified in the particular clause.