



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 11-020

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 September 2008.]

2. Form, Style and Placement in Administrative Code

- a. As written, SECTION 1 of the rule is confusing. It should read:
Comm 5.003 (1m) to (32h) are renumbered Comm 5.003 (2) to (48), and Comm 5.003 (32m) to (52) are renumbered Comm 5.003 (50) to (75), and Comm 5.003 (53) Note, (58) Note and (59) Note, as renumbered, are amended to read:
- b. Whenever a rule provision is renumbered, “Comm” should follow “renumbered” in the treatment clause. For example, SECTION 7 should read: “SECTION 7. Comm 5.315 (2) (c) 1. is renumbered Comm 5.315 (2) (c)”.
- c. Sections 14 and 15 do not treat s. Comm 5.325 (1) (a) and (b) in numerical order. They should be reversed. This comment also applies to SECTIONS 16 and 17.
- d. There are several SECTIONS that renumber part of ch. Comm 5, and then recreate that provision with new language. For example, SECTION 19 renumbers s. Comm 5.34 (3) (a) 2., and then SECTION 20 recreates subd. 2. Another example is in SECTIONS 22 and 23. This is problematic for clarity in the references to subd. 2. that may currently exist and in conducting future research to these provisions. This is one reason why the Legislative Reference Bureau’s method would be to create a provision by inserting it according to s. 1.03 (2) (g), Manual, not renumber a provision and recreate it with new language. The department should consider creating the language through insertions according to s. 1.03 (2) (g), Manual.

e. Sections Comm 5.84 (1) (a) and 5.85 (1) (a) reference a person holding a certification but there are no cross-references as to where in the code the person may obtain this certification. Are they in s. Comm 5.84 or 5.85? The department should consider adding a cross-reference to aid the reader in finding out what he or she would need to satisfy this requirement.

f. It is unclear why SECTION 38 renumbers s. Comm 5.85 (5) (intro.) to s. Comm 5.85 (5) (a). This converts pars. (a) to (i) into subds. 1. to 9., resulting in sub. (5) having only one paragraph – par. (a). This is also done in SECTIONS 41 and 43. Having only one paragraph is generally avoided. [See the example in s. 1.03 (2) (h), Manual.] The department should consider not renumbering these (intro.) paragraphs.

g. SECTION 40 repeals and recreates s. Comm 5.86 (1) without a title. Because the rest of the subsections in s. Comm 5.86 have titles, sub. (1) should also have a title.

h. SECTION 48 creates s. Comm 5.89 (1) (d) without a title; however, pars. (a) and (b) have a title but par. (c) does not. Paragraphs do not need a title, but if a title is used, then all paragraphs in the subsection should be titled. [s. 1.05 (1), Manual.] The department should decide whether to use titles, and if so, then title all of the paragraphs in s. Comm 5.89 (1).

i. SECTION 59 repeals and recreates s. Comm 5.97 (1). In doing so, it removes the activities that a utility contractor may undertake. These activities, however, are not inserted into any other provision in s. Comm 5.97. This makes it unclear what a utility contractor may do. Also, because other professions regulated under ch. Comm 5, such as plumbing apprentices, plumbing learners, and tank system tightness testers list the activities that the profession may do under subsections titled “General,” the department should consider whether removing the language in s. Comm 5.97 (1) is necessary. If so, then it should amend sub. (1) so that the reader can see what changes are being made.

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

a. Since s. Comm 5.323 (6) (e) 4. is being renumbered s. Comm 5.323 (6) (f), the cross-references need to be changed – “subds. 1. to 3.” should be changed to “par. (e) 1. to 3.”

b. In SECTION 26, the word “indentured” in s. Comm 5.53 (4) (b) should also be stricken-through to reflect the changes made in 2009 Wisconsin Act 291 to ch. 106, Stats.

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

a. SECTIONS 14, 16, and 17 appear to make substantive changes to the manufactured home salesperson license, as they eliminate the need for one salesperson to obtain a separate license for each place of employment, and also clarify that the licenses do not expire. However, these substantive changes are not listed as substantive changes in the “Summary of Proposed Rules.” The department should consider listing these changes in the summary.

b. It is unclear why the department would use a fire protection system license issued by the Florida state fire marshal as one of the two prerequisites for being certified in Wisconsin as an automatic fire sprinkler system tester (see SECTION 28). How easy is this option to be

obtained? Is Florida's license a nationally recognized license or used as a prerequisite by other states? The department should consider explaining in the analysis why it is relying upon another state's license as a prerequisite for a Wisconsin certification.