



---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

Scott Grosz and Jessica Karls-Ruplinger  
Clearinghouse Co-Directors

Terry C. Anderson  
Legislative Council Director

Laura D. Rose  
Legislative Council Deputy Director

### CLEARINGHOUSE RULE 15-001

#### 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. Should s. DHS 178.02 (2) set forth a procedure for requesting a variance?
- b. In s. DHS 178.03 (32), the paragraphs should end in periods, and the use of “and” is unnecessary.
- c. The material in the Notes following ss. DHS 178.05 (4) (b) and 178.06 (2) (e) contain substantive requirements and should be included in the text of the rule. [s. 1.09, Manual.]
- d. Section DHS 178.05 (5) (b) should not contain requirements pertaining to continued validity of a permit because that subsection’s title refers only to action on permit applications. Information pertaining to validity of existing permits should be set forth in a separate portion of the rule that consolidates all requirements and procedures pertaining to validity of existing permits. In addition, the rule would be easier to follow if the procedures and requirements for issuance of initial permits were set forth in one portion of the rule and the procedures and requirements for renewals of existing permits were set forth in a separate portion of the rule.
- e. Section DHS 178.06 (2) (f) should be rewritten to state that an operator shall pay the stated amount, rather than requiring the department to charge the stated amount.
- f. The title to s. DHS 178.06 (3) should indicate that it contains information relating to penalties for payments made with insufficient funds.
- g. In s. DHS 178.11 (1), the phrase “an operator may not” should be rewritten as “No operator may”.

h. What is the intended effect of the second sentence in s. DHS 178.13 (7) (a)? As written, the requirements set forth apply equally to new and existing campgrounds. If the intent of the sentence is to exempt campgrounds that were already providing utensils before the effective date of the rule from ever having to comply with the requirements, the provision needs to be rewritten to convey that intent.

i. In s. DHS 178.13 (7) (b), quotation marks should be placed around the material that must be included in the required sign.

j. In s. DHS 178.16 (1) (a), and elsewhere in the rule, the phrase “as enforced by the department of safety and professional services” is superfluous and should be deleted.

k. It appears that either there is a word missing from s. DHS 178.16 (3) (a) 1. or the word “and” should be deleted.

l. Section DHS 178.20 (2) should be indented.

m. Section DHS 178.25 (title) should indicate that it regulates mobile homes, in addition to manufactured homes.

n. Throughout the proposed rule, the style of titles should follow the format prescribed in s. 1.05 (2) of the Manual.

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

a. In s. DHS 178.03 (20) (Note), it appears the department intends to refer to s. 101.91 (10), Stats.

b. Section DHS 178.05 (4) (a) 3. should include a cross-reference to the provision of the proposed rule that sets forth the procedures and requirements for pre-inspections.

c. Because the rule defines the term “operator”, that term, rather than “operator of a campground”, should be used consistently throughout the rule. Likewise, the term “POWTS” should be used rather than the phrase “private on-site wastewater treatment system”, and “department” rather than “department of safety and professional services”.

d. The reference to s. SPS 326.10 (10), in s. DHS 178.25, appears to be incorrect.

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

a. Does the term “camping unit”, as defined in s. DHS 178.03 (7), include a camping trailer?

b. In s. DHS 178.03 (8) (intro.), “all” should be replaced with “any”.

c. In s. DHS 178.03 (21) and (Note), a comma should precede “Stats.”.

d. In s. DHS 178.03 (23), is it necessary that a thing be made available to the public in order for it to be considered “operator-provided”? Is it sufficient that it be provided to customers of the campground?

e. In s. DHS 178.03 (25), the department should clarify the reference to “any of these”.

f. Should the definition of “petting zoo”, in s. DHS 178.03 (26), include a collection of animals that may be touched but not fed, and animals that may be touched by adults as well as children?

g. In the Note following s. DHS 178.03 (32), “consumptions” should be changed to “consumption”.

h. It appears that the definition of “rustic campsite”, in s. DHS 178.03 (34), could be more simply written by stating that it is a site that is not accessible by motorized vehicle. In addition, the acronym “MOU” should be spelled out.

i. Should s. DHS 178.04 (1) (b) clarify that only substantial modifications of campground attributes require departmental approval?

j. In s. DHS 178.04 (2) (a) 2., more specificity should be provided regarding the required “distance of separation”. Is this a reference to separation between campsites or between camping units or something else?

k. Section DHS 178.04 (2) (b) should set forth the factors the department must consider when reviewing an application and a procedure under which an applicant may have an opportunity to correct a plan prior to the department’s final action on the application.

l. The permit in s. DHS 178.05 should be identified as a permit to operate a campground.

m. In s. DHS 178.05 (1) (b), how is it determined that there are two separate campgrounds in existence when all the campsites are located on the same tract of land and operated by the same person?

n. Should it be clarified, in s. DHS 178.05 (3), that transfer of a permit to a family member is allowed only if the family member to whom the permit is transferred operates the campground upon transfer? Is there a procedure for this type of transfer? How is the department notified of the transfer?

o. In s. DHS 178.05 (4) (a) 1., what types of fees are contemplated as “previously due” from an applicant for a new permit?

p. Section DHS 178.05 (4) (a) 2. appears to require an applicant for a new permit to operate a campground to have already implemented rules for operation of the campground. However, the proposed rule does not provide any indication of the required contents of those rules.

q. Must an applicant for a permit renewal submit an application for renewal under s. DHS 178.05 (4) (b)? The rule appears to only require submission of a fee.

r. In the title to s. DHS 178.05 (5), “APPLICATION” is misspelled.

s. Section DHS 178.05 (5) (c) (intro.) states that a permit *may* be denied under any of the circumstances listed in the rule. This appears to give the department an inappropriately large degree of discretion. The rule should be revised to more clearly specify when a permit must be issued or denied to ensure that applicants are treated fairly and consistently. This comment also applies to the department’s decision regarding issuance of a temporary order without advance notice or hearing under s. DHS 178.07 (3) (a).

t. Section DHS 178.05 (5) (c) 1. states that a permit may be denied if the department has not completed a preinspection. The rule should require the department to complete a preinspection within a specified amount of time after a request by a person wishing to apply for a permit to operate a campground.

u. In s. DHS 178.05 (5) (c) 7., what level of proof of a violation is required? Are all violations included, regardless of when they occurred or how serious they were?

v. Does the \$749.00 fee for operating a campground without a permit apply regardless of the length of time a campground is operated without a permit?

w. Section DHS 178.07 (1) (b) 4. requires an operator to “show just cause” why a permit should not be suspended or revoked. Should this requirement be relocated to s. DHS 178.08, relating to the hearing on suspension or revocation of a permit?

x. Section DHS 178.07 (2) (a) should set forth a procedure for extension of the time period specified in an order and the factors the department must consider when considering a request for an extension.

y. In s. DHS 178.07 (3) (b) 1., it should be clarified that the delivery referred to is delivery of the order.

z. In s. DHS 178.07 (3) (b) 2., it appears that a reference to par. (c) should be inserted after the reference to subd. 1.

aa. The rule refers to orders “given” by the department. The more common terminology is “issuance” of orders.

bb. Section DHS 178.10 states that agents must create enforcement and appeal procedures. The rule should require those procedures to be in writing, to be approved by the department and to be publicly available.

cc. Section DHS 178.11 (4) states that a campsite may not be located in an area that “would” constitute a health or safety hazard. It is not clear if this is meant to refer to hazards that would occur only in wet seasons or to locations that would be hazardous for location of a campsite under any conditions.

dd. Section DHS 178.11 (4) (b) could be interpreted to prohibit locating a campsite in proximity to an enclosure containing a small animal that does not attract flies or even a pet dog or cat living in a home. Should this provision be clarified?

ee. In s. DHS 178.11 (5) (a), is there any upper limit in the number of campers from one family that may occupy an individual campsite?

ff. The provisions setting forth the applicability of s. DHS 178.13 (1) (a) 1., 2., and 3. to existing campgrounds are confusing and should be rewritten.

gg. The requirement in s. DHS 178.13 (1) (c) that the operator “work with the department or its agent to submit an action plan for compliance” is vague. The rule should, at a minimum, set forth the required elements of an action plan, the factors the department must consider in approving an action plan, a timeline for development and implementation of an action plan, and penalties for failure of an operator to meet the timeline or successfully implement the plan. These comments

also apply to the requirement that an operator “work with the department to develop a timeline” for replacement or removal of a nonconforming recreational vehicle from a campground in s. DHS 178.13 (3) (c) 4. and the requirement that an operator work with the department to remove nonconforming mobile or manufactured homes under s. DHS 178.25.

hh. Section DHS 178.13 (2) (a) 1. b. should be reviewed to ensure that the initial applicability provisions are drafted as described in the Analysis.

ii. Section DHS 178.13 (2) (c) should state whether a camping unit may be stored on a campsite.

jj. Section DHS 178.13 (3) (e) requires an operator to obtain a tourist rooming house permit for any camping units that exceed 400 square feet in area, except for tents, mobile homes and recreational vehicles, which typically are not permanent fixtures. Why does that provision also exempt manufactured homes, which are permanent structures, from this requirement?

kk. It appears that the last sentence in s. DHS 178.14 (3) should be rewritten as two sentences.

ll. What materials are considered to be “approved” under s. DHS 178.13 (7) (c)?

mm. The requirements of s. DHS 178.15 (1) (b) would be easier to understand if the circumstances under which an operator is allowed to reinstate use of a failing POWTS were each set forth in a separate subdivision of par. (b). In addition, “is complies” should be changed to “is in compliance with”.

nn. It appears that s. DHS 178.15 (2) (a) 3. should be rewritten as follows: “The operator has a written agreement that allows campers who stay at the campground to dispose of waste at the sanitary dump station identified in subd. 2., and provides a copy of the written agreement to the department.”.

oo. In s. DHS 178.15 (3) (b), it is unclear to what the word “its” refers. As written, that provision allows the department to discharge its waste into transfer tanks.

pp. Section DHS 178.16 (3) (d) should specify the circumstances under which the department may approve the use of unisex toilet fixtures. In addition, is a “toilet fixture” the same as a toilet? If so, the term toilet should be used. If not, the rule should explain what a toilet fixture is. The rule should also discuss whether unisex toilet fixtures must be provided in the same number as single sex toilet fixtures, as set forth in Table 178.16.

qq. Does the exemption set forth in s. DHS 178.16 (3) (d) 3. apply if a campground with plans approved before September 1, 1992, is expanded to include more camping units after the effective date of the rule?

rr. What are the “approved methods” referred to in s. DHS 178.20 (1) (a)? Is there a procedure by which an operator may request approval of a method?