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CLEARINGHOUSE RULE 95-115

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 October 1994.]

2. Form, Style and Placement in Administrative Code

a. The rule makes extensive revisions to the numbering of ch. Trans 131, which may be confusing. See s. 1.03 (7), Manual, regarding the insertion of new rule sections between consecutively numbered rule sections. When one insertion is made, the letter “m” may be used; for two insertions, use the letters “g” and “r”; for three insertions, use “e”, “m” and “s”; and for four insertions, use the letters “d,” “h,” “p” and “t.”

b. The number of definitions in s. Trans 131.02 appears excessive. Some definitions, such as the definitions for “contract” and “liter” can be omitted, since the meanings of the terms are obvious. Other definitions appear to be substantive. For example, the definition of “remote sensing test” does not so much define the term as describe the test in general terms. It would be more appropriate to include specific requirements for the performance of the test in the text of the rule and then, whenever referring to the test in the text of the rule, refer to “the remote sensing test under s. Trans ____.” Alternatively, the term could be defined as “the test required under s. Trans ____.”

c. SECTION 15 creates a definition of “fast pass/fail algorithm.” The text of the rule, however, uses somewhat different terminology. These terms should be made consistent.

d. In addition to the definitions of various test methods, certain definitions include substance which should be placed in the text of the rule. In particular, the requirement in the definition of “master automotive technician” that a master automotive technician be responsible for the contractor’s emission testing technical assistance program and technical assistance center should

be placed in the text of the rule, rather than the definition. Also, the second sentence of the definition of “recognized automotive emission repair technician” belongs in the text of the rule.

e. The reference in s. Trans 131.02 (40) should be to s. 341.268 (1) (d), Stats.

f. In s. Trans 131.02 (55), the definition of “VIN” could be elaborated, since the term refers not to any vehicle identification number but, rather, to the unique vehicle identification number assigned to each vehicle by the manufacturer.

g. In the treatment of s. Trans 131.03, the notation “(title)” should be inserted following “Trans 131.03.”

h. In s. Trans 131.03 (2) (c), the notation “Trans 131.03 (c)” should be replaced by the notation “Trans 131.03 (2) (c).” Also, the correct statutory citation in this provision is to “s. 110.20 (9) (g), Stats.”

i. In the treatment clause of SECTION 54, the notation “(title)” should be inserted following “Trans 131.03 (4).”

j. In s. Trans 131.03 (6) (b) 2., the citation to “s. NR 485 (04)” is incorrect.

k. In s. Trans 131.03 (6) (b) 6., the reference to s. Trans 131.03 (7) and (8) should be to subs. (7) and (8), instead. [See s. 1.07 (2), Manual. See also ss. Trans 131.03 (10) (a) 3. and 131.14 (1).]

l. In s. Trans 131.03 (8) (b) 5., the phrase “is responsible for ensuring” should be replaced by the words “shall ensure.”

m. In s. Trans 131.03 (10) and elsewhere, the word “can” should be replaced by the word “may” and the word “must” should be replaced by the word “shall.”

n. In s. Trans 131.03 (10) (b), the third sentence should be placed in a note and the phrase “shall trigger” should be replaced by the word “triggers.”

o. The treatment clause in SECTION 61, and in other SECTIONS of the rule, provides that “Trans 131.03 (9) is renumbered 131.03 (11) and, as renumbered, is repealed and recreated to read:”. The combination of renumbering and repealing and recreating is not a normal drafting device. In the future, the original provision simply should be repealed and then subsequently the second provision should be created in the appropriate numerical sequence.

p. Section Trans 131.03 (11) (intro.) should conclude with the phrase “any of the following apply:”.

q. Section Trans 131.03 (11) (f) should read: “The vehicle is emitting smoke in amounts greater than....”

r. The last sentence of s. Trans 131.03 (11) (j) should read: “This paragraph applies to vehicles for which emission recall notices have been issued after January 1, 1995.”

s. In s. Trans 131.12 (2) (a), reference is made to “technical guidance s. 85.2226.” Where can this reference be found? Is it a part of the Code of Federal Regulations?

t. In s. Trans 131.13 (1) (a) (intro.), the phrase “all of” should be inserted before the phrase “the following.”

u. In s. Trans 131.13 (6), the first sentence should be numbered as par. (a) and the remaining paragraphs renumbered accordingly.

v. Section Trans 131.14 (4) should refer to “the standard shown in Table 1” and the table which follows should be identified as Table 1. The sentence that follows the table should be placed in a note.

w. In s. Trans 131.14 (5), the reference to “s. Trans 131.14” should be replaced by the phrase “this section.”

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

a. In s. Trans 131.02 (57), the definition of “waiver emission equipment inspection” should include a cross-reference to identify the provisions under which vehicles are presented for waiver determination.

b. In s. Trans 131.09 (1), the phrase “as authorized by s. 110.20 (10) (b), Stats.,” is unnecessary and should be omitted.

c. Section Trans 131.09 (3) refers to “the proper fee.” This should be replaced by “the fee under s. Trans ____.”

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

a. In the analysis of s. Trans 131.13 (6), the phrase “some motorists to contests” should be replaced by the phrase “a motorist to contest.”

b. The rule establishes definitions for “inspection” and “test” that are identical. However, under the previous rule, there appeared to be a distinction between an inspection and a test; the former was an inspection of emission equipment and the latter was a test of emission gases. Giving the terms identical definitions blurs this distinction and makes the rule unclear. If the department intends to retain the distinction, the terms should be given distinct definitions. If the department intends to eliminate the distinction, it should choose one of the two terms for use.

c. In s. Trans 131.02 (28), what constitutes a nationally recognized certification? Whose recognition is required?

d. Section Trans 131.02 (34) refers to “section 202 (m) of the Clean Air Act Amendments of 1990.” This reference should be replaced by a reference to the U.S. Code or the term “Clean Air Act Amendments of 1990” should be defined in terms of the U.S. Code citation.

e. Section Trans 131.03 (2) provides that nonexempt vehicles must be inspected “during one of the following times.” Are the provisions in pars. (a) to (d) exclusive? In other words, if a vehicle is inspected under par. (a), does that inspection remove the necessity to otherwise be inspected under par. (c) when the vehicle has failed a remote sensing test? This should be clarified.

f. Section Trans 131.03 (2) (c) refers to a “remote sensing test” as required by s. 110.20 (9), Stats. This statutory reference, and other similar statutory references in the rule, are unnecessary and incorrect. The provisions contained in s. 110.20 (9), Stats., generally require the department to promulgate rules regarding certain subjects. Specific requirements are not contained in s. 110.20 (9), Stats. These references should be deleted.

g. In s. Trans 131.03 (8) (f), what does the phrase “initial period” mean? Can this phrase be clarified by an appropriate cross-reference? [See, also, s. Trans 131.03 (9) (g).]

h. In s. Trans 131.11 (1) (a), a comma should be inserted after the word “functions” and after the word “sensing.” Also, in par. (c), the phrase “In addition” is unnecessary and should be deleted.

i. In s. Trans 131.11 (3) (a), the first comma should be replaced by the word “or.”

j. Section Trans 131.12 (1) refers to standards subsequently approved by the administrator of the U.S. Equal Protection Agency. Prospective incorporation of standards raises questions of invalid delegations of authority. For this reason, administrative rules incorporating federal statutes or regulations are limited to the version of those provisions in effect at the time the rule is promulgated. This section of the rule should be reviewed.

k. In s. Trans 131.13 (5) (a), the second comma in the second sentence should be replaced by the word “or.” Also, if the penalties referred to in this provision become standardized, they should be placed in the Wisconsin Administrative Code.

l. In s. Trans 131.15 (3) (b), what is the “enhanced emission inspection program”?