

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 99-123

### 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 September 1998.]

### 2. Form, Style and Placement in Administrative Code

a. In SECTION 1 of the rule, it is not readily apparent that the second line of text and the title are underscored. The rule should employ a different format to make it clear that those provisions are underscored. This comment applies to all amendments to tables where the underscored material is immediately followed by a line from the table.

b. SECTIONS 3 and 4 of the rule appear to define new terms. As such, the new definitions should be treated separately in the rule in their own definitional subsections. In addition, the phrases “wherever used in chs. Comm 82 and 84” is redundant and should be deleted since the definitions in s. Comm 82.11 specifically apply to chs. Comm 82 and 84. [See s. Comm 82.11 (intro.).] This comment also applies to SECTIONS 6, 7, 12, 13 and 14.

c. In s. Comm 82.20 (12), because the first sentence does not lead grammatically into the following subunits, it should be numbered as par. (a) and the remaining paragraphs should be renumbered accordingly. The same problem occurs in the paragraph currently numbered as par. (a). [See also s. Comm 82.40 (3) (d) 3.] Finally, in sub. (12) (a) 4. and (b) 4., the second sentence should read: “A violation of the conditions under which an approval is issued constitutes a violation of this chapter.”

d. If the provisions of s. Comm 82.21 (3) are meant to apply to all cross connection control devices, then the sentence should be rewritten to read: “The maintenance and performance testing requirements of this subsection applies to all cross connection control

devices, regardless of the date of their installation.” If the subsection is meant to apply only to those devices installed prior to the effective date of the subsection, the sentence should be rewritten to read: “The maintenance . . . applies to cross connection control devices installed prior to the effective date of this subsection .... [revisor inserts date]”.

e. Because the note to s. Comm 82.31 (16) (d) 2. is being created, it need not be underscored.

f. In s. Comm 82.33 (9) (i) 4., the phrase “shall apply” should be replaced by the word “applies.”

g. In s. Comm 82.40 (3) (d) 3. (intro.), the last sentence should be deleted. Instead, the effective date provision at the end of the rule-making order should be amended to note an exception to the general effective date. That is, s. Comm 82.40 (3) will take effect on the first day of the ninth month following publication in the Wisconsin administrative register.

h. Because of the extensive revisions to s. Comm 82.50 (10) (g) and (h), it is suggested that they simply be repealed and recreated.

i. In s. Comm 84.10 (4), the phrase “data indicates” should be replaced by the phrase “~~indicates~~ data indicate.”

j. SECTION 49 of the rule is actually creating s. Comm 84.20 (2) (b). Therefore, the creation of par. (b) should be treated separately in a numbered section with its own treatment clause. This comment also applies to SECTIONS 53 and 65 of the rule.

k. The treatment in SECTION 52 of the rule can be made more specific so as to eliminate the necessity of printing several provisions that are not being treated. For example, s. Comm 84.20 (5) (b) 1. c., 3. and 4. are not amended and do not need to be reproduced in the rule. The treatment clause should only identify those provisions being amended and the section should not contain provisions not being amended. In addition, the deletion of par. (j) 2. should be treated separately. There is no need to renumber the remaining provisions of par. (j) after the deletion of subd. 2., but if they are to be renumbered in the manner set forth in the rule, the underscored material should follow the stricken material. Finally, the creation of par. (k) 1. e. should be treated separately.

l. The treatment clause of SECTION 53 of the rule contains no mention of amending subd. 2. It appears that it should.

m. The creation of s. Comm 84.30 (5) (c) 10. should be treated separately. When doing so, if it were located at the end of the current subdivisions, there would be no need to renumber current subds. 10. to 17.

n. Because s. Comm 84.30 (5) (c) 19. is being created, it should not be underscored.

o. SECTION 64 of the rule should be combined with SECTION 63 since they both amend various paragraphs of s. Comm 84.40 (4).

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

a. It is noted that in the note to s. Comm 82.11 (104e), pars. (b) and (c) are actually numbered pars. (c) and (d) in the statutes. [See s. 50.01 (3), Stats.]

b. Section Comm 82.20 (4) (e) 1. a. refers to submitting plans detailing certain items in accordance with “sub. (4).” Since the subdivision paragraph is in sub. (4), the reference should be changed to “this subsection.” If another “sub. (4)” is the intended cross-reference, a more complete cross-reference should be provided.

c. In s. Comm 82.20 (4) (e) 3., the rule calls for the department to specify time intervals for certain inspections and authorizes the assessment of a fee for each inspection. How and where will the times be specified? How much will the fee be and will it be assessed each time? These items should be specified in the rule by either a cross-reference to an existing provision, or the creation of a new provision, providing guidance on this department authority. For example, s. Comm 82.20 (12) (f) refers to fees for inspections. Would this be an appropriate cross-reference?

d. In s. Comm 82.20 (12) (b) 6., how will the department limit the number of applications it will accept? How will people know of the limit and when that limit is reached? Will this number be published in a rule or in the Wisconsin administrative register? The rule should identify where this information will be published or made available to the public.

e. Section Comm 82.21 (3) (a) refers to devices being maintained in accordance with “the appropriate standard.” An appropriate cross-reference should be provided to assist readers to determine which standards are being referred to and which are the appropriate ones. For example, adding a phrase such as “as identified in this section” at the end of the paragraph would help clarify where the appropriate standards are to be found.

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

a. In s. Comm 82.11 (6e), the phrase “that the plumbing system is in” should be inserted after the word “demonstrate” in order to adequately complete the meaning of the rule. In addition, to whom must it be demonstrated that the alternate plumbing system complies with the intent of chs. Comm 82 and 84? The department? The installer? The proposer of the alternative system? The rule should be clarified.

b. The colon at the end of s. Comm 82.11 (49s) should be deleted.

c. In s. Comm 82.11 (64s), the phrase “that the plumbing system is in” should be inserted after the word “demonstrate.” In addition, by whom is the valid and reliable date being sought? Also, who determines compliance with the intent of chs. Comm 82 and 84? The rule should be clarified. Finally, is an experimental plumbing system one that clearly does not meet the letter of the Plumbing Code but is designed in such a way as to meet the intent of it? This idea should be better developed in the definition.

d. In s. Comm 82.20 (4) (e) 1. b., a copy of the experimental system approval must be submitted when requesting an approval of an experimental plumbing system. How is this done? How does one submit the approval if one is applying for it? Or is the approval to be submitted a different approval? In any event, the rule should be clarified. Also, in subd. 1. c., who is the “owner of the installation”? Does this refer to the owner of the site where the experimental system will be installed? Or does this refer to the owner of the experimental system? The rule should be clarified.

e. Section Comm 82.20 (4) (e) 4. seems to say that after five years an experimental system must be removed or changed. Is this the intent? What does it mean to issue an “alternate approval”? The rule should be clarified.

f. In s. Comm 82.20 (4) (e) 5., what does it mean for an experimental plumbing system to be recognized? Does it mean that it is no longer considered experimental? The rule should be clarified.

g. In s. Comm 82.20 (12) (a) 1., must an alternate plumbing system be approved before statewide installation? What if the system is not going to be used statewide? Must the system still gain approval? The rule should be clarified.

h. In s. Comm 82.20 (12) (b) 2., what is the review for? Is the information required by this provision necessary for review to approve the plan or to review as a follow-up? The rule should be clarified.

i. In s. Comm 82.20 (12) (c), the phrase “considered null and” is unnecessary and should be deleted.

j. In s. Comm 82.21 (3) (b) 4. b., who is the “designated authority”? According to the table, it appears that the “designated authority” is the department and purveyor. This should be made clear in the substantive provision of the rule. In addition, subd. 5. provides that the results must be made available to the department and others upon request. Why is this necessary if the test results must be submitted to the department under subd. 4. b.?

k. In s. Comm 82.36 (4), what does GPM stand for? Gallons per minute? The acronym should not be used unless it is a term defined in the rule.

l. In s. Comm 82.36 (5) (a), how is the size of horizontal drain piping “otherwise approved by the department”? This rule should be clarified. This comment also applies to s. Comm 82.36 (6) (a).

m. In s. Comm 82.50 (2), what are “related facilities”? The rule should be clarified.