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CLEARINGHOUSE RULE 95-228

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 cross-references that refer to a series of chapters of the Administrative Code should use “to” rather than a hyphen. For example, see the Note after s. ILHR 5.52 (6) (a) and a number of other places in the rule.

b. In s. ILHR 5.003 (46), “as” should be deleted and “under” should replace “in.” The word “under” is used in other definitions.

c. Throughout the rule, subunits that follow introductory material should end with a period rather than a semicolon or the word “and” or “or.” For example, in s. ILHR 5.08 (1) (f) 2., all of the subdivision paragraphs should end with periods and subd. 2. (intro.) should state “2. The attendance record shall include all of the following:”. As another example, all of the paragraphs in s. ILHR 5.09 (2) should end with periods and “any of the following occur” should be inserted before the colon in sub. (2) (intro.). The entire rule should be reviewed for instances of this error. [See s. 1.03 (intro.), Manual.]

d. The subunits in s. ILHR 5.09 (5) should be pars. (a) and (b), not subds. 1. and 2. Also, in subd. 2., “with” should be inserted after “associated.”

e. Introductory material should end with a colon and lead into the subunits that follow. [See s. 1.03 (8), Manual.] Section ILHR 5.10 (intro.) does not do this and should therefore be numbered par. (a) and all subsequent paragraphs should be renumbered. The entire rule should be reviewed for instances of this error. Also see ss. ILHR 5.10 (2) (e) (intro.) and 5.20 (1) (b) (intro.). In addition, s. ILHR 5.62 (5) (b) 2. does not follow from par. (b) (intro.).

f. There are a number of references in the rule to “the effective date of this rule.” If the department wishes to insert the actual date, this may be done by adding “... [revisor inserts date]” after that phrase and the Revisor of Statutes will then insert the actual effective date. [See s. 1.01 (9) (b), Manual.] In the alternative, the department could replace the phrase by “August 1, 1996,” since that is the date used in the effective date clause of the rule.

g. In s. ILHR 5.30 (5) (a), “registration” should replace “registered.” In s. ILHR 5.41 (1) (b) Note, “to” should be inserted after “relating.” In ss. ILHR 5.53 (4) and 5.54 (5), “system” should replace “systems.” In s. ILHR 5.54 (2) (intro.), “an” should replace “a.” In s. ILHR 5.61 (5) (c), the second “owner” should be deleted. In s. ILHR 5.62 (1) Note, “issued” should replace “issue.” In s. ILHR 5.68 (7) (a), “renew” should replace “renewed.” In s. ILHR 5.96 (3), “its” should precede “equivalent.”

h. The rule uses s. ILHR 5.43 twice. Also, the cross-reference in the Note after the first s. ILHR 5.43 (4) and in other notes should include “ILHR.”

i. The statutory cross-reference in s. ILHR 5.54 (1) (intro.) should not include “ILHR.”

j. In s. ILHR 5.62 (6), the first “(a)” should be deleted, as should the second “a”.

k. The cross-reference after s. ILHR 5.67 (5) (a) should be corrected.

l. SECTION 39 repeals and recreates s. ILHR 20.09 (5) (b). Is it intended that only subd. 1. of that paragraph be repealed and that current subd. 2. be retained? If so, “1.” should be inserted in the treatment clause. If not, the paragraph will have only one subdivision, in which case subd. pars. a. and b. should become subds. 1. and 2.

m. Since ch. ILHR 68 is being repealed, the title of the appendix following that chapter should be “Appendix 67.”

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

a. Section ILHR 5.62 (4) refers to “sub. (5) (b)” as providing an exception to the requirement of passing an examination. However, sub. (5) (b) does not set forth an exemption from the testing requirements.

b. Section ILHR 20.09 (5) (b) refers to “dwelling contractor financial responsibility registration under s. ILHR 5.30.” The cited provision relates to boiler repairers. It appears that the correct cite is s. ILHR 5.31.

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

a. The word “approved,” which is defined in s. ILHR 5.003 (1), is reasonably clear and does not appear to require definition. The definition proposed by the department creates confusion because “accepted” has meanings other than “approved.” Under this definition, a document could be accepted by the department but not approved by it.

b. “Business establishment” is defined in s. ILHR 5.003 (7). Several key provisions of the rule use “business” rather than “business establishment.” [See ss. ILHR 5.31 (3) (b), 5.32 (3) and 5.41 (2).]

c. The term in s. ILHR 5.003 (8) (“business of installing...”) is defined in the noun form, but this term is used in the verb form in s. ILHR 5.70 (1) (a).

d. The proper quotation mark should be used in s. ILHR 5.003 (11).

e. “Sight” should be changed to “site” in s. ILHR 5.003 (14) and (20).

f. The word “also” should be deleted in the Note after s. ILHR 5.003 (15).

g. The definition in s. ILHR 5.003 (22) could be simplified by referring to the “business of installing or servicing.” Also, the Note after that subsection is awkward and is substantive. The material could be added to the subsection; e.g., “‘HVAC contractor’ does not include a person performing incidental work....”

h. The definition of “gross negligence” in s. ILHR 5.003 (24) should be reviewed by the department’s attorneys.

i. “Codes” should be replaced by “statutes” in s. ILHR 5.003 (25).

j. The Note after s. ILHR 5.003 (29) should commence: “See the note after the definition of “fireworks” in sub. (18)....”

k. The phrase “in this state” in s. ILHR 5.003 (33) is superfluous.

l. The first “special” in s. ILHR 5.003 (36) appears to be superfluous.

m. The word “type” should be replaced by “that” in the Note after s. ILHR 5.003 (48).

n. Many provisions in the rule are written in the passive voice. In some instances, such as s. ILHR 5.07 (1) (a), this merely makes the rule difficult to read. This provision could be clarified by rewriting it as “...the department shall mail a notice of renewal to a credential holder at least 30 days....” In other instances, such as in s. ILHR 5.07 (1) (b), the true subject of the sentence disappears altogether and the rule is rendered ambiguous. This provision should be rewritten as: “A credential holder may not use failure to receive a notice for renewal as an excuse for failure to renew....” The rule contains many examples of this problem.

o. Section ILHR 5.08 (1) (c) could be clarified to indicate the hours of continuing education that may be counted for increments other than 30 minutes of class time. For example, how much credit may be claimed for a 45-minute course?

p. In s. ILHR 5.08 (1) (d), courses must “relate to” the credential category. In approving continuing education courses, will the department specifically approve courses for various credential categories and, if so, should the rule indicate this? Also, in that paragraph, “credential’s” should be replaced by “credential holder’s.” Finally, in that paragraph, “field of interest” should be clarified.

q. The rule uses “from” in a substantial number of provisions where “after” would be preferable. For example, see s. ILHR 5.08 (1) (e) 2. In similar provisions, “of” should be replaced by “after” as in s. ILHR 5.08 (1) (f) 3.

r. The word “their” should be replaced by “the” in ss. ILHR 5.08 (2) (b) and 5.09 (8) (b) and other similar provisions of the rule.

s. It appears that “of” should be replaced by “or” in s. ILHR 5.10 (1) (b) 2. Also, the Note after that subdivision should include a cross-reference to s. ILHR 5.31 (3) or preferably a direct reference to the appendix.

t. Can the last sentence of s. ILHR 5.10 (2) (c) be clarified by rewriting it as “...after a hearing order is entered”?

u. The phrase “contested case hearing” should be replaced by “a contested case hearing” in s. ILHR 5.10 (2) (d).

v. The word “feet” is missing after “15” in s. ILHR 5.20 (1) (b) 7.

w. The word “is” should be replaced by “are” in s. ILHR 5.21 (1) (b).

x. The title of s. ILHR 5.32 is “MANUFACTURED HOME AND MOBILE HOME SELLERS.” This is the appropriate form of this phrase and the slash should be replaced by “and” throughout that section.

y. Section ILHR 5.32 (4) and a number of similar provisions throughout the rule require the certificate holder to comply with “all appropriate federal and state requirements.” This phrase could use clarification. If this means that the department is imposing as a license condition a requirement to comply with federal and state requirements applicable to that trade or business, that should be clearly stated. If this merely states that the certificate holder must comply with all federal and state requirements applicable to the trade or business, it is redundant and should be eliminated. If this provision is retained in the rule and the department can list which state and federal requirements to s. ILHR 5.32 are applicable, it would be useful to include such a list in the rule.

z. It is not clear what the acronyms stand for in ss. ILHR 5.34 (3) (a) and 5.35 (5) (a).

aa. A superfluous “the” should be deleted in the Note after s. ILHR 5.40 (1).

ab. In s. ILHR 5.62 (5) (a), a comma should be inserted after “inspector.”

ac. Should the comma after the first “equipment” in s. ILHR 5.70 (1) (a) be replaced by “or”?

ad. Throughout subch. VII, “an” should precede “HVAC.” The words “a” and “an” are used inconsistently.

ae. “Inerting” is not a word. See s. ILHR 5.87 (5) (b) 1.

af. A plain English term should be substituted for “holidays” in s. ILHR 5.87 (5) (b) 8.

ag. The statement of qualifications in s. ILHR 5.94 (3) (a) and (b) could be clarified by replacing the comma between the cross-reference and the number of hours of credit with a dash or colon.

ah. The phrase “as long as he or she are indentured” in s. ILHR 5.95 (3) (b) should be replaced by “if he or she is indentured.”

ai. The reference to s. ILHR 5.003 (3) should be included in the title of Appendix A5.003. Also, “(28)” should replace “(26).”

aj. In Appendix A5.12, “indicates” should be replaced by a more appropriate word, such as “provides” or “states.”

ak. The parenthetical question after the repeal of s. ILHR 7.11 should be deleted.

al. In the treatment clause to SECTION 35, “are” should replace “is.”

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

The department requires individuals attending a continuing education course to indicate their Social Security number on the attendance record. The department should determine whether this requirement is consistent with the Federal Privacy Act of 1974 (P.L. 93-579), including the general prohibition on requiring individuals to disclose their Social Security numbers and the exceptions to that prohibition.