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RULES CLEARINGHOUSE

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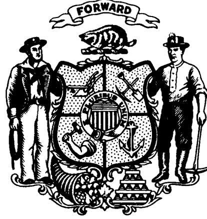

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CLEARINGHOUSE RULE 99−143

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.]

1. Statutory Authority

a. Section 227.21 (2), Stats., provides that an agency may, with the consent of the Revisor of Statutes and the Attorney General, adopt standards established by technical societies and organizations of recognized national standing by incorporating these standards in its rules by reference to the specific issue or issues of the publication in which they appear, without reproducing the standards in full. The Revisor of Statutes and the Attorney General must consent to incorporation by reference only in a rule of limited public interest and in a case where the incorporated standards are readily available in published form. Section Comm 20.24 (3) (a) provides that alternate standards to those apparently consented to by the Revisor of Statutes and Attorney General, and that are equivalent to or more stringent than those standards incorporated by reference, may be used instead of incorporated standards when approved by the Department of Commerce. What statutory authority exists for allowing the Department of Commerce, rather than the Revisor of Statutes and the Attorney General, to consent to the incorporation of standards by reference? [See, also, s. Comm 51.25 (2) (a).]

b. Sections Comm 50.21 (5) (c) and 66.24 (5) (c) require plan submittals for activities in buildings of defined volumes. The Notes to these provisions state that the department will allow use of square footage benchmarks in lieu of the volume thresholds contained in the rule. In view of the volume requirements contained in s. 101.12 (3) (b), Stats., what statutory authority exists for the use of square footage alternatives? If the substance in the Notes is statutorily authorized, the material should be incorporated into the body of the rule.

2. Form, Style and Placement in Administrative Code

a. The second sentence of s. Comm 3.05 (2) (b) should be placed in a note to the rule.

b. In s. Comm 3.06 (2) (e), the phrase "shall have the right to" should be replaced by the word "may." In sub. (4) (d), the first sentence should be rewritten to read: "The administrator may electronically record a review conference." In sub. (4) (e), the phrase "has the sole discretion to" should be replaced by the word "may."

c. Section Comm 20.18 (3) (g) should be rewritten to read: "Paragraphs (e) and (f) do not apply to an experimental system if this code is revised to include or enable the experimental system to conform to the intent of this code." [See, also, s. Comm 66.25 (3) (g).]

d. In s. Comm 50.04 (6), the second and third sentences appear to be explanatory. Consequently, the sentences should be included in a note to the rule rather than in the body of the rule.

e. The cross-reference in s. Comm 50.12 (1m) should be to "chs. Comm 50 to 64." [See also s. Comm 50.12 (1) (i) 1.]

f. In s. Comm 50.21 (2) (a), the word "through" should be replaced by the word "to." [See, also, ss. Comm 50.21 (2) (k) 1., 50.22 (2) (a) and 66.24 (2) (L) 1. and (8) (a).]

g. The cross-reference in s. Comm 50.22 (1) should use the standard term "under" rather than "relative to." [See, also, the examples after s. Comm Table 54.12-B Note.]

h. The superfluous comma in the statutory cross-references in s. Comm 50.27 (1) and (2) should be deleted.

i. SECTION 79 should repeal and recreate s. Comm 51.25 (2). SECTION 80 should repeal s. Comm 51.25 (3).

j. "Department" should not be capitalized in s. Comm 54.12 (2) (b) 4. d.

k. In s. Comm 57.001 (1) (k), the notation "Stats.," should be inserted after the statutory cross-reference.

l. In s. Comm 62.50 (1), the phrase ", as defined in s. Comm 62.051" is unnecessary and should be deleted. In sub. (2), the notation "s." should be replaced by the notation "ss."

m. The stricken language should precede the new language in s. Comm 66.12 (2). See, also, s. 66.19.

n. The material in the Note in s. Comm 66.14 (1) (d) appears to establish a substantive requirement and, if so, it should be included in the text of the rule rather than in a note.

o. In s. Comm 66.25 (5) (b), the notation "subs." should be replaced by the notation "sub."

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

a. Paragraphs (16) and (17) of the analysis will be clearer if the phrase "is exempted" is replaced by the phrase "is not required." In par. (26), there is a typographical error in the word "occupies."

b. The term "second class city" is used in s. Comm 2.31 (1) (e) and several other places in the rule. It may be appropriate either to define this term in the rule or to refer to the statutory definition in s. 62.05, Stats., in a note.

c. The phrase "may receive" in s. Comm 20.18 (1) (a) is unclear. Is it the intent to prohibit the use of certain materials unless a written approval is received from the department? If this is the intent, the provision should be redrafted accordingly. [Note that this and the following comments regarding s. Comm 20.18 also apply to s. Comm 50.19.]

d. In s. Comm 20.18 (3) (e) 1., the rule should indicate who is required to write the inspection report.

e. In s. Comm 50.12 (5) (a) Note, it appears that the word "are" should be inserted before the word "required."

f. In s. Comm 57.07 (2), it appears that a word such as "constructed" or "placed" should be inserted after the phrase "shall be."

g. In s. Comm 62.505 (2) (b) 5., the second sentence should be expanded to describe who will give the approval and that blower inlets should not be located until approval is given.

h. Does the "implementation" of ch. Comm 66, as referenced in new language in s. Comm 66.02 (1), have a precise date? If so, can that date be used in lieu of April 1, 1995? If not, how is the date of initial applicability of this provision to be determined?