



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-047

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 2002.]

2. Form, Style and Placement in Administrative Code

a. The statement in the analysis that the rule interprets ch. 281, Stats., is over-broad. The analysis should identify the provisions of that chapter that the rule interprets.

b. The rule creates two sections using section numbers already in use in subch. III of ch. NR 114--ss. NR 114.26 and 114.27. This could easily be resolved by renumbering s. NR 114.15 to be s. NR 114.151, s. NR 114.16 to be s. NR 114.152, s. NR 114.17 to be s. NR 114.153, and s. NR 114.18, *et seq.*, to be s. NR 114.16, *et seq.*

c. Definitions of commonly used words are needed only when the word is used in a specific or limited meaning. In these cases, it is not necessary to convey the common meaning of the word in the definition, only to indicate the specific or limited meaning that is intended. Thus, the definition of “business” should be shortened to “a business that does servicing.” (Note, though, that “servicing” is not defined. Perhaps the defined term “septage servicing” is intended to be used here.) Similarly, “certificate” should be defined as “a certificate issued under s. NR 114.23.” “Owner” and “service shop” do not appear to need definition.

d. The only aspect of the definition of “portable restroom servicing assistant” that is not obvious on its face is that the person is supervised by an operator-in-charge. This, however, is a substantive requirement, which should not appear in a definition. [s. 1.01 (7) (b), Manual.] It appears that this requirement should be specified in s. NR 114.18 (2).

e. The definition of “certified operator” contains unnecessary verbiage. It should be shortened to “a person who has been issued a certificate under s. NR 114.23.”

f. The term “direct responsible charge” is a noun modified by two adjectives, but it is defined as though it were a verb. However, since it is used only once in the entire rule (in the definition of “operator-in-charge”), a phrase conveying the meaning of the term should be used in that one provision and the definition should be dispensed with.

g. The phrase “a letter indicating” should be omitted from the definition of “grade.” A grade is the classification, not the letter indicating it. However, is the meaning sufficiently obvious from s. NR 114.19 that a definition is unnecessary?

h. The notation “OIC” should follow the definition of “operator-in-charge” rather than “operator-in-training.” However, it would be preferable to use only one term, not the full term some of the time and the acronym the rest of the time.

i. The active voice should be used whenever possible to provide the greatest clarity. [s. 1.01 (1), Manual.] In s. NR 114.18 (6), it is hard to tell who is required to do something--the owner or owners of the vehicle? The business using the vehicle? The department? (The lack of clarity regarding the term “license” does not help--see comment 4. a.) The rule should be reviewed with this in mind. The following are additional examples, showing correct usage:

- s. NR 114.21 (1) The department shall use examinations to determine ...
- s. NR 114.21 (2) The department shall conduct written examinations ...
- s. NR 114.22 (2) The department may not refund fees ...
- s. NR 114.25 (4) The department shall develop or approve The department shall offer training ...
- s. NR 114.27 (2) (intro.) An applicant for a variance shall submit

j. In s. NR 114.19, because the introductory material does not grammatically lead into the following subunits, the first sentence should be renumbered as subsection (1) and the remaining subsections should be renumbered accordingly.

k. Section NR 114.20 (intro.), (1) and (2) should be numbered s. NR 114.20 (1) (intro.), (a) and (b); s. NR 114.20 (3) and (4) should be numbered s. NR 114.20 (2) and (3).

l. In s. NR 114.21 (7), the phrase “at its discretion” is unnecessary and should be deleted.

m. The standard format for using the term “notwithstanding” should be used in s. NR 114.21 (7): Notwithstanding subs. (2) to (4), the department may

n. In s. NR 114.24 (1) and (2), “are required to” should be replaced by “shall.” In s. NR 114.24 (5), each occurrence of “will” should be replaced by “shall.”

o. Section NR 114.26 (2) (intro.) should end with the words “does any of the following.”

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

a. What are the licenses referred to in s. NR 114.18 (4) and elsewhere, and under what section of the Administrative Code are the licenses issued? This should either be identified by reference each time the term “license” is used or by defining the term as the license issued under that section. Presumably, this refers to licenses issued under s. NR 113.05.

b. Section NR 114.21 (3) refers to a form. The requirements of s. 227.14 (3), Stats., should be met.

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

a. In the second sentence of the statement of statutory authority, the word “is” should be replaced by the word “are.”

b. In the second paragraph of the analysis, the word “penalty’s” should be replaced by the word “penalties.”

c. In the paragraph relating to the rules effect on small businesses, the word “effected” should be replaced by the word “affected.”

d. In s. NR 114.17 (10) and (11), the receptacles holding wastewater and septage are not entirely identical. Is it accurate to imply that only certain receptacles hold wastewater and others hold septage or should these definitions be redrafted in a parallel fashion?

e. In s. NR 114.18 (1) and (2), the phrase “may engage in septage servicing” may be preferred over “may do septage servicing,” if only because it is closer to the style of drafting used in the statutes.

f. Section NR 114.18 (1) should read: “Only a certified operator, operator-in-training or portable restroom servicing assistant may engage in septage servicing.” The last clause of the sentence, as drafted in the rule, is no more than a restatement of the definition of “certified operator.”

g. In s. NR 114.18 (4), “which” should be replaced with “that.”

h. The phrase “method of disposition,” used in s. NR 114.18 (5), is not very clear, while a few more words could make it clearer: “method used by the operator-in-charge to dispose of septage.”

i. Section NR 114.20 (4) would be clearer if, in the first sentence, the word “not” were inserted prior to the phrase “exempted in s. NR 114.25 (3).”

j. In s. NR 114.21 (2), the phrase “week days” should be replaced by the word “weekdays.” In sub. (5), the word “the” should be inserted before the word “applicant.” Finally,

in sub. (7), under what circumstances may the department waive the 28-day application requirement?

k. Section NR 114.22 (1) does not specify a fee for oral examinations.

l. In s. NR 114.26 (1), the phrase “operator, the OIC, or both” appears. Since an “operator-in-charge,” a defined term, means the certified operator who has been designated by the owner to be in direct responsible charge of the septage servicing business, should the word “operator” in s. NR 114.26 (1) be replaced by the word “owner”? Also, since the term “operator-in-charge” is defined, the entire rule should be reviewed to ensure that this term is used rather than the word “operator.”