



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 05-058

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 January 2005.]

2. Form, Style and Placement in Administrative Code

a. The plain language analysis discusses the rationale for the rule and the process used for its development, but should have a more detailed explanation of the changes made. A May 5, 2005 memorandum on the department’s Web site contains greater detail and parts of the memorandum could be incorporated into the plain language analysis.

b. The state comparison should include a comparison with Iowa.

c. The rule creates several purpose statements, at the beginning of new sections, that create duties of counties; it also modifies the existing purpose statement for the chapter in a like manner. These substantive provisions do not belong in statements of purpose. What is more, they largely duplicate language in other provisions of the rule. It appears that the purpose statement in current s. NR 115.01 is sufficient as is; the additional intent statements are superfluous and no intent statements should include substantive provisions.

d. Explanatory material, including lists of examples, should be placed in notes. See, for example, ss. NR 115.03 (3), (19), and (25). [See s. 1.09 (1), Manual.]

e. In the definition of “floodplain,” the second sentence should be omitted and the first sentence should end “... during the regional flood, as defined in s. NR 116.03 (41).” Also, what is the pertinence of the note regarding the definition of “floodway”?

f. In the definition of “forest land”, a period should be placed after the word “uses” and the remainder should be a separate sentence that begins ““Forest land” does not include property where”

g. Every time the rule uses the term “lot” it includes “or parcel of land.” The first is defined and the second is not. Twice, the rule uses “parcel of land” alone: in the definitions of “lot” and “variance.” The rule should use “lot,” the defined term, exclusively, with the exception of the definition of “lot.”

h. The rule uses both “shoreland frontage” and “width at the ordinary high water mark,” which appear to mean the same thing and only the first of which is defined. The rule should use only one term.

i. SECTIONS 8 to 14 treat the subunits of ss. NR 115.05 and 115.06 in the wrong order. The sequence of treatments should be as follows:

SECTION 8. NR 115.05 (1) is renumbered NR 115.05 (2) and amended to read:

SECTION 9. NR 115.05 (1) is created to read:

SECTION 10. NR 115.05 (2) (Note) is created to read:

SECTION 11. NR 115.05 (2) is renumbered NR 115.07 and NR 115.07 (title), (1) (a), (2) (a) and (c), (3) (intro.), (c) (note), (e), (g), (j), and (k), (4), and (5) (a) to (c), (d) (intro.), (e), (f), (g) (intro.), (h) and (i), as renumbered, are amended to read:

[Note that only the amended subunits should be shown in the text.]

SECTION 12. NR 115.05 (3), (4), (5) and (6) are repealed. [Note that this could also be written: “NR 115.05 (3) to (6) are repealed.”]

j. Unless the plural is specifically intended, rules should be drafted in the singular. The many references in this rule to “counties” should be “a county.” For example, s. NR 115.05 (2) should read: “A county shall adopt a shoreland zoning ordinance that” (Note that the singular is construed as including the plural.) When a rule provision that has referred to “a county” again refers to the same county (in the abstract), the rule should refer to “the county.” For example, s. NR 115.11 (4) (e) could be rewritten as follows: “When submitting an ordinance ..., a county may request The county shall demonstrate to the department”

k. Section NR 115.07 (1) (intro.) should end with a colon.

l. To the extent practical, the rule should be drafted in the active voice. See s. NR 115.07 (5) (c) for an example of incorrect drafting and s. NR 115.07 (5) (g) for an example of how incorrect drafting can be corrected. In another example, in s. NR 115.09 (3), the language following “(Revisor inserts date),” should begin “a county may not create a lot that”

m. The note following s. NR 115.09 (3) appears to be substantive and so should be placed in the text of the rule. (A note is not part of a rule and so is not enforceable.) The same

applies to the note following s. NR 115.13 (1) (b); also, the cross-reference in that note is incorrect.

n. The rule uses the terms “backlot” and “outlot” without definition. Since these terms are each used only once, in s. NR 115.11 (3) (c) and (8), respectively, they should not be defined, but the text of those sections should be rewritten to indicate clearly the meaning.

o. The language in ss. NR 115.11 (4) (e) and (9) and 115.13 (5) (c) that repeats the purposes articulated in s. 281.31 (1) and (6), Stats., which are also reproduced in s. NR 115.01 (2), is redundant and should be omitted.

p. The note following s. NR 115.13 (3) (d) would be more informative if it paraphrased the standard in s. 59.694 (7) (c), Stats. Similarly, it would be helpful to reproduce or paraphrase the requirements of s. 59.692 (1s), Stats., in a note to s. NR 115.21 (3) (c).

q. Section NR 115.13 (4) (intro.) should be omitted, as each paragraph that follows stands on its own and duplicates the information in the introduction.

r. If the department intends the documents referenced in the note following s. NR 115.15 (1) (c) 3. to be enforceable, the rule must incorporate them by reference, not merely reference them in a note. The same applies to other documents referenced in the rule.

s. The reference in s. NR 115.15 (5) to impervious surface limits should be moved to s. NR 115.17, which addresses that subject.

t. To better group related material, s. NR 115.19 (1) (c) and (2) should be renumbered NR 115.19 (2) (a) and (b). Paragraph (b), as renumbered, could be further divided, making each sentence a separate, untitled subdivision. In any case, the word “also” should be omitted.

u. Section NR 115.21 (4) (c) 1. should begin with the phrase, “Except as provided in subd. 2.,” In subd. 2., the word “only” should be omitted.

v. Both s. NR 115.21 (4) (d) (intro.) and (5) (d) (intro.) purport to introduce a list of conditions that must be satisfied. In each case, however, only subd. 1. follows grammatically from the introduction. The remaining subdivisions should be either recrafted to follow from the introduction or established as separate provisions. The same applies to s. NR 115.21 (intro.), (8), and (9).

w. Section NR 115.23 (intro.) should end with the phrase, “all of the following:”.

x. Since the new s. NR 115.25 is very little different from the current s. NR 115.06, the rule should renumber the existing section and amend only the provisions that are changed.

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

a. The rule repeals s. NR 115.06. Since s. NR 115.05 (2) (e) 8. includes a reference to a portion of the repealed section, the reference will need to be changed.

b. Section NR 115.13 (3) (d) should include citations to the listed laws.

c. It appears that the reference to “sub. (d)” should be to “par. (e)” in s. NR 115.21 (4) (d) 2.

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

a. In ss. NR 115.01 (2) (intro.), 115.03 (30), 115.07 (3) (c) (note), (j), and (k), 115.09 (3), 115.23 (5), and 115.25 (2) (c), and possibly in other provisions, “which” should be replaced by “that.”

b. The definition of “forest land” does not appear exhaustive in its lists of lands that either are or are not “forest land.” For example, does the term include or exclude grazed forest lands, or idle forest lands?

c. In the definition of “forest management activities,” a comma is missing before “including planting trees.”

d. In the definition of “nonconforming structure,” the phrase “whose location, dimensions or other characteristics” should be replaced by “the location, dimensions, or other characteristics of which.”

e. In the definition of “shoreland-wetland zoning district,” the comma following “district” should be omitted. In the definition of “structure,” the comma following “placed” should be omitted.

f. Is there any possible confusion regarding the meaning of “wetland inventory map” in s. NR 115.07? It could be identified as “wetland inventory maps created by the department under s. 32.32, Stats.”

g. In s. NR 115.11 (4) (d), “lot” is misspelled.

h. The definition of “structure” is limited to objects “placed upon the ground, a river bed, stream bed, or lake bed” and makes no reference to whether the object is designed to float. Consequently, a floating houseboat is *not* included in the structures referred to in s. NR 115.13 (1) (a), contrary to the note. If the department intends this provision to apply to floating houseboats, houseboats should be explicitly added, either to this provision or to the definition of “structure.”

i. In s. NR 115.13 (4) (d) 2., the phrase “is not economically viable because” is unnecessary; that phrase should be omitted and the provision redrafted, as necessary.

j. In s. NR 115.15 (3), the word “other” should be deleted; turf grass is not native vegetation.

k. In s. NR 115.23 (4), “insure” should be replaced with “ensure.”

l. In Appendix A, “ordinary high water mark” should be written out. Also, to avoid confusion with setback requirements created by the rule, would it be clearer to refer to “Distance from ordinary high water mark”?

m. Several words are misspelled -- “very” (spelled “vary”) in the first paragraph of the plain language analysis; “cites” (spelled “sites”) in the second line of the Minnesota comparison; “set back” (spelled “setback”) in s. NR 115.21 (4) (d) 3.; and “hypothesized” in the fiscal estimate.