



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-120

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

The cover sheet for the hearing draft of the proposed rules mentions chs. Comm 14 and 60 to 66. Should the cover sheet also list chs. Comm 7 and 70?

3. Conflict with or Duplication of Existing Rules

a. There are a number of rules of other agencies that might need to be revised as a result of this proposed rule. The department should alert agencies if changes are needed.

For example, s. HFS 39.03 (11) refers to the definition of “fire department” in s. Comm 14.02 (3). As a result of this proposed rule, the new reference will be to s. Comm 14.03 (4).

As another example, rules of several agencies refer to chs. Comm 61 to 65. Since a new ch. Comm 66 is being created, should those rules now refer to chs. Comm 61 to 66? For example, see ss. DWD 301.07 (4), HFS 190.04, and NR 1.91 (8).

b. Current s. Comm 62.0202 (2) (c) refers to s. Comm 70.17 (15). Current s. Comm 75.001 (1) (e) refers to ch. Comm 70. Since the proposed rule repeals ch. Comm 70, these references should be corrected.

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

The note after s. Comm 14.01 (12) (c) refers to a form. The department should comply with s. 227.14 (3), Stats., regarding references to applicable forms.

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

a. The term “community” is used in s. Comm 7.31 (2) (a) and (b), but is not defined. Without a definition, it cannot be determined with certainty what this term means.

b. Section Comm 14.01 (1) (c) 1. provides an exemption for buildings or structures located on Indian reservation land held in trust by the United States. The department should determine and clarify whether this exemption also should apply to off-reservation trust land or to land owned in fee by the tribe or a tribal member and located within the boundary of the reservation.

c. Section Comm 14.01 (1) (c) 3. a. and b. require certain documents to be “filed” with the Register of Deeds. In most cases, the Register of Deeds “records” documents, which allows a copy of the document to be made and retained by the Register of Deeds, rather than filing the original document. The department should determine the most appropriate method of retaining these documents.

d. Section Comm 14.01 (1) (c) 4. refers to “farm premises” and “farming.” There is not a single accepted definition of “farm” or “farming.” One possibility would be to use the definition in s. 102.04 (3), Stats., which is cross-referenced in s. 101.01 (11), Stats. However, the department should review this or any other definition of “farm” or “farming” to determine whether it is appropriate for the scope of the exemption.

e. The phrase “in this chapter,” should be substituted for “therein” in s. Comm 14.01 (2) (a) 3.

f. Section Comm 14.01 (2) (b) 1. should be reviewed carefully. The “document(s) referenced in this chapter” includes a number of statutes, and it does not appear that the department intends that rule requirements will apply rather than any differing statutory requirements.

g. Section Comm 14.01 (2) (b) 2. provides that if the rule contains conflicting requirements, the most restrictive rule shall govern. It will not necessarily be apparent in every case which one of any two or more conflicting requirements is the most restrictive. Should the rule specify a method for determining which requirement is the most restrictive?

h. Section Comm 14.01 (2) (c) states that the department may interpret requirements of “all adopted codes and standards.” The rule should specify what is meant by “all adopted codes and standards,” and “may” should be substituted for “reserves the right.” Also, the note following s. Comm 14.01 (2) (c) is not clearly related to the preceding rule.

i. Section Comm 14.03 creates definitions, but does not specify the rules to which these definitions apply. If these definitions apply only to ch. Comm 14, that should be specified in the proposed rule.

j. The retroactivity provision in s. Comm 61.03 (2) is based on the effective date of the rule. It is not clear whether this refers to the rule as originally adopted or as subsequently

amended. Can a rule that has been amended a number of times have multiple effective dates? Also, it is often difficult to determine what is the effective date of a rule. Should the rule include a note regarding the procedure for determining the effective date? If the department wishes to insert an actual date in this provision, it could use the language under s. 1.01 (9) (b), Manual.

k. In addition to the comment on retroactivity above, a number of provisions in proposed s. Comm 61.03 (7) to (11) specify the applicability of the rule as the rule exists on one of three or more potentially different dates. It is difficult to understand how these dates relate to the retroactivity provision in s. Comm 61.03 (3). The department should review these provisions carefully to be sure that they are consistent.