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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 07-089

#### 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.]**

#### 1. Statutory Authority

The Legislature granted authority to the department to “modify definitions” under s. 101.984 (1), Stats., and, under that authority, the department has chosen to limit the definition of the term “conveyance” to exclude certain types of elevators, lifts, and other devices in individual residential dwelling units and to exclude personnel hoists and material hoists. However, it is clear that the Legislature in enacting 2005 Wisconsin Act 456 intended to apply the regulation of elevators, escalators, and other conveyances to an owner of a private residence. [See ss. 101.983 (2) (c) and (d) and 101.988 (3), Stats.] The department should explain how its authority to modify a statutory definition extends to negating substantive provisions of the statutes.

#### 2. Form, Style and Placement in Administrative Code

a. The rule preface itself should include information about the agency contact person, including e-mail and telephone number, and the place where comments on the rule are to be submitted and the deadline for submission. [s. 1.02 (2) (a), Manual.]

b. The department should consider simplifying the rule by clearly defining the various categories of licenses and registrations so that the particular activities authorized by each need not be repeated multiple times in the rule. For instance, “maintain or repair conveyances or replace conveyance components or subsystems, except the replacement of hoist ropes and governor ropes” is repeated numerous times in s. Comm 5.995.

c. SECTION 9 is unnecessary and should be removed. A note could be used to explain that SECTION 7 of 2005 Act 456 provides for the termination of the emergency rules when the permanent rules take effect.

d. Section Comm 5.64 “(3)” is used twice. Paragraphs (a) and (b) under the second subsection (3) should be combined. What is meant by “acceptable” continuing education under paragraph (c) of this same subsection, and elsewhere in the rule?

e. In s. Comm 5.990 (1) (b), the use of the phrase “existing conveyances” is vague. The provision should refer to conveyance existing on a specific date.

f. In s. Comm 18.1007 (1) (c), the phrase “is responsible for reporting” should be replaced by the phrase “shall report.” Similarly, in sub. (2) (a), the phrase “are responsible for submitting” should be replaced by the phrase “shall submit.”

g. In s. Comm 18.1007 (2) (d), if the word “code” refers to the defined term “building code” in s. Comm 18.1004 (5), then the defined term should be used. If the word “code” refers to something else, an appropriate citation should be used.

h. Section Comm 18.1013 (1) and (2) (a) (intro.) should begin with the word “An” rather than the word “The.”

i. In s. Comm 18.1013 (4) (c) 3., the phrase “the rules under this chapter” should be replaced by the phrase “any provision of this chapter.” [See also s. Comm 18.1014 (1).] Also, sub. (4) (f) 3. should be renumbered as par. (g) and the reference “subd. 1. or 2.” should be replaced by a reference to “par. (f).”

j. In multiple places in the rule proposal, it is stated that receipt of or renewal of a license is contingent upon review of a criminal history record. The department should specify what standards will be used to deny or approve a license based on criminal history.

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

If the department intends that applications be made on forms prepared by the department, then the requirements of s. 227.14 (3), Stats., should be met. [See also the requirement that a report be prepared on a department form contained in s. Comm 18.1015 (2) (a) 3.]

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

a. The cover page of the hearing draft lists Comm 2 as a chapter affected by the proposal, which appears to be incorrect.

b. In the title of SECTION 10 of the rule preface, the word “Affect” should be replaced by the word “Effect.”

c. In s. Comm 5.990 (4), the word “their” should be replaced by “the contractor’s” and similar changes should be made elsewhere in the text of the proposal.

d. Section Comm 5.990 (4) (b) provides that a licensed elevator contractor will construct, install, alter, service, replace, or maintain conveyances. Should this list of activities be consistent with the list provided in s. Comm 5.991 (1) (a) (intro.)?

e. In s. Comm 5.991 (1) (a) (intro.), the last “a” from the last line should be deleted. In this same passage, the department should consider using “license or registration” instead of “credential,” consistent with the reference under par. (b). Paragraph (b) should be reworded to state the *types of activities* that may be undertaken on the conveyance devices covered by ASME A18.1a, etc.

f. Section Comm 5.992 (1) (a) refers to the elevator mechanic license examination. Other provisions of the rule also refer to various examinations. The department should provide some information regarding who provides the exams and when and where they can be taken.

g. Section Comm 5.992 (1) (c) 2. should be rephrased to clarify that the license acquired under par. (c) does not terminate after two years, only the opportunity to apply for a new license under that paragraph. Consider using “This paragraph applies to license applications received prior to....” Similar changes should be made to other parts of the rule that use the same wording.

h. In s. Comm 5.992 (5), “a” should be inserted before “registered elevator apprentice-restricted.”

i. In s. Comm 5.992 (6) (b) 3., the word “a” before the phrase “elevator apprenticeship” should be replaced by the word “an.”

j. In s. Comm 5.993 (6) (a) 2., “elevator mechanic license-restricted” should be replaced by “elevator mechanic-restricted license.”

k. Insert “to” before “erect” in the first line of ss. Comm 5.994 (5) (a) 2. and 5.998 (5) (a) 2.

l. Section Comm 5.995 (4) should be reworded for consistent use of the plural form and for clarity.

m. Under s. Comm 18.1007 (2) (b), it is unclear what must be made available at the installation site.

n. In s. Comm 18.1009 (1), the word “devices” should be replaced by the word “device.”

o. In s. Comm 18.1011, the first cross-reference in the third note should read “101.988 (3).”

p. In s. Comm 18.1013 (2) (b) (intro.), the word “with” should be replaced by the word “include.”