



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 08-030

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” established under s. 101.981 (1), Stats., and, under that authority, the department has chosen to limit the definition of the term “conveyance” to exclude certain types of lifts 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. In SECTION 1 of the proposed rule, only par. (a) should be shown since it is the only part of sub. (10g) that is amended. The treatment clause should be revised accordingly.

b. When the department modifies a subsection or paragraph, it is not necessary to include the title to the particular code section. For example, see SECTIONS 2 and 3 of the proposed rule. [See s. 1.05 (3) (c), Manual.]

c. When renumbering a subunit of a rule, the entire citation of the renumbered subunit should be shown. For example, the treatment clause of SECTION 7 should state “Comm 18.1002 (1) (a) to (p) are renumbered Comm 18.1002 (a) 1. to 16.” The entire rule should be reviewed for instances of this error.

d. It appears the department intends to insert, in alphabetical order, two new definitions in s. Comm 18.1004. In order to place the new definitions in alphabetical order, the department should renumber s. Comm 18.1004 (6) to (7), renumber s. Comm 18.1004 (7), (8), and (9) to (9), (10) and (11), and create s. Comm 18.1004 (6) and (8) for the definitions of “conveyance” and “dwelling unit,” respectively. SECTION 14 of the proposed rule then should amend s. Comm 18.1004 (9) as renumbered rather than s. Comm 18.1004 (8) as renumbered. Additionally, do SECTIONS 12 to 16 of the proposed rule properly account for the effect of CR 07-089 on s. Comm 18.1004?

However, a simpler approach to creating new subsections is to leave the current subsections numbered as they are, and to insert the new subsections with a number and a letter. For example, the definition of “conveyance” could become a new sub. (5m) in s. Comm 18.1004. The definition of “dwelling unit” could become a new sub. (6m).

e. The treatment clause of SECTION 22 should refer to s. Comm 18.1013 (1), (2) (a) (intro.), (2) (b) (intro.) and 1. to 3., 5., and 6.

f. In SECTIONS 27, 43 and 44 of the proposed rule, the department should include the notation “(title)” in the introductory and treatment clauses of the rule. [See s. 1.05 (3) (a), Manual.]

g. The department should revise s. Comm 18.1708 (1) and (2) (d) to incorporate the text of the note into the body of the rule.

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

a. In item 4. of the rule analysis, the department cites s. 101.988, Stats., as a source of statutory authority. The department also should refer to this section in item 2. of the rule analysis.

b. The department should include the word “Stats.” after the references to s. 101.981 (1) (c) in ss. Comm 5.003 (10g) and 18.1004 (6). [See s. 1.07 (2), Manual.]

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

a. Should the department clarify the meaning of the phrase “to the exclusion of all others” in SECTION 16 of the proposed rule?

b. In s. Comm 18.1802 (7) (a), the department should use the phrase “may not” or consider an alternative expression such as “the rated load shall be at least 750 lbs.” [See s. 1.01 (2), Manual.]