



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 08-110

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

As statutory authority, the department cites a number of general statutes relating to workplace and employee safety, as well as s. 101.63 (1), Stats., relating to the establishment of construction and inspection standards for one- and two-family dwellings. Several similar licenses and certifications, including some of those referred to in s. Comm 5.30 (1) (b) 1., are authorized by specific statutory references. [See ss. 101.862 (1), 101.95, 101.951, 101.96 (2), and 101.985 (1), Stats.] Additionally, the department cites 2007 Senate Bill 228 and 2007 Assembly Bill 466, each relating to the regulation of construction contractors and subcontractors, granting rule-making authority, and providing a penalty, as inspiration for the proposed rule. Given the specific statutory authority related to several similar licenses and certifications, and the failure of 2007 Senate Bill 228 and 2007 Assembly Bill 466 to be enacted into law, is the department certain it has the statutory authority to register building contractors?

2. Form, Style and Placement in Administrative Code

a. In SECTION 5 of the proposed rule, do s. Comm 5.30 (1), (2), and (3) effectively communicate the department’s stated intent that the contractor registration requirement applies to business owners? Would the section be more effective if the “qualifications for registration” appeared earlier in the proposed rule? Also, ss. Comm 5.30 (1) and Comm 61.925 (2) refer to “person or entity” while s. Comm 5.30 (2), (3), (4), and (5) refer to “person.” Typically, references to “person” are construed to include both individuals and entities. In this case, the

department might consider defining “person” for purposes of the appropriate chapter or sections and incorporating the qualifications of s. Comm 5.30 (3) in that definition.

b. If a definition applies to a particular section, it should be placed at the beginning of the section. [See s. 1.02 (3), Manual.] Also, the definitions should be placed in alphabetical order.

c. In s. Comm 5.30 (1) (c) 1, “to” should replace the hyphen in “60-66.”

d. The department should review s. Comm 5.30 (1) (c) 1. in the context of ss. 1.01 (7) (c) and 1.09, Manual. The use of “means” in a definition limits the scope of that definition. Accordingly, the last sentence of s. Comm 5.30 (1) (c) 1. is necessary only if those activities are included in the chapters cited in the first sentence. The department may wish to revise the note to describe the listed trades using a phrase other than “may include.” For example, the department simply could say “Examples:”. Additionally, the department should be aware that notes to rules are not part of substantive law created by rule. If the department wishes to list examples as part of substantive law, it should do so in the rule text; i.e., “The term includes....”

e. Section Comm 5.36 (4) (b) 1. should refer to “POWTS maintainer” or “maintainer” rather than “soil tester.”

f. While unaffected by the proposed rule, s. Comm 5.62 (7) (b) 1. appears to share characteristics with numerous sections affected by the proposed rule. Did the department intend to repeal and recreate s. Comm 5.62 (7) (b) 1.?

g. Section Comm 5.66 applies to POWTS inspectors. Did the department intend to refer to other credentials in SECTION 18 of the proposed rule?

h. A number of changes in the proposed rule are unrelated to the registration of building contractors. These should be explained in greater detail in the analysis. For example, is s. Comm 61.295 (1) a new requirement? It should be explained as should the statutory basis for the requirement.

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

In SECTION 3 of the proposed rule, the cross-reference for late renewal should be s. Comm 5.07 (2) (b) 1. a.

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

a. The word “is” should be inserted before “created” in the treatment clause for SECTION 5.

b. In s. Comm 5.30 (2) (c), “His or her” should replace “Their.” A similar change is needed in sub. (4) (a).