



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 10-039

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

The rule appears to exceed the scope of the authorizing statute by authorizing the department to assess a forfeiture against a person other than a person who violates the requirements of s. 101.147, Stats. Section 101.147, Stats., prohibits any person from holding himself or herself out as a construction contractor unless the person is registered as a construction contractor with the department and the statute authorizes the department to assess a forfeiture against any person who violates that provision. The rule, however, authorizes the department to assess a forfeiture against a person who contracts with another individual or entity to engage in construction business activities if that other person is not properly registered as a building contractor. The rule analysis should cite specific authority for imposing penalties on persons other than those identified in s. 101.147, Stats.

2. Form, Style and Placement in Administrative Code

a. The rule analysis should explain why the rule, in s. Comm 5.125 (3) (a), imposes penalties for the violations of licensing requirements for the 10 types of licenses, certifications, and registrations listed.

b. In the title to s. Comm 5.125, the phrase “Administrative forfeitures” should be underscored.

c. It appears that the treatment clause of SECTION 8 should read: “Comm 5.30 (1) (c) (intro.) and 1. are repealed.” Then, following SECTION 10, a new SECTION 10m, can be inserted to read:

SECTION 10m. Comm 5.30 (1m) (intro.) is created to read:

Comm 5.30 (1m) (intro.) In this section:

The creation of this introduction will provide an appropriate instruction regarding the applicability of the definitions contained in s. Comm 5.30 (1m).

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

a. Section Comm 5.125 (3) (a) should contain cross-references to the specific administrative rule provisions which, if violated, would be the basis for imposition of a penalty under the proposed rule.

b. In s. Comm 5.125 (3) (c), the reference to “a credential required under s. Comm 5.30 (1) (a) or (b)” should be rewritten to eliminate the reference to par. (b), since that paragraph does not require a credential. In addition, rather than referring to “a credential required under s. Comm 5.30 (1) (a),” the rule should refer to the actual credential required under that paragraph, which is a building contractor registration.

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

a. In the second paragraph of the summary of proposed rules, the word “and” should be inserted before the phrase “mechanical refrigeration.”

b. In s. Comm 5.125 (3) (a), “licensing” should be deleted since it is inaccurate to refer to “licensing requirements” of a certification or registration. In addition, it should be made clear in that paragraph that the conduct for which a penalty may be assessed under par. (c) is not the violation of a licensing requirement by the person penalized but rather it is the violation of licensing requirement by an individual or entity with whom the person contracts.

c. In s. Comm 5.125 (3) (b), it appears that the phrase “of license, certification, or registration” should be inserted after “type.”

d. In the note to s. Comm 5.30 (4) (e), the period following the notation “Comm” should be deleted.