



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-039

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 November 2011.]

1. Statutory Authority

The plain language analysis explains that the rule creates s. PSC 114.003 (2) (b) to codify a requirement that was repealed under 2007 Wisconsin Act 63. Typically, the repeal of a specific statutory provision would be interpreted to also repeal agency authority to promulgate rules with identical requirements. The analysis should address why that interpretation does not apply in this instance.

2. Form, Style and Placement in Administrative Code

a. In the rule summary, the commission should address each of the rule headings listed in s. 1.02 (a), Manual. In particular, the current summary omits a summary of factual data and analytical methodologies. [s. 1.02 (2) (a) 8., Manual.]

b. Provisions of ch. PSC 114 that remain unchanged by the rule appear to outnumber the affected provisions. In addition, a number of provisions appear to be unchanged except to update references to the 2012 National Electric Safety Code. Changes of this scope and nature may not justify repealing and recreating the entire chapter. A straightforward, section-by-section revision of ch. PSC 114, amending or repealing existing sections or creating new sections individually, would make the rule much more transparent.

c. In PSC 114.003 (2), the text included in the provision that is repeated in the Note should be removed. Also, the purpose for including the phrase “though some portion of the code may not be directly enforceable by state agencies” is not clear. If it is meant to be merely

explanatory, consider moving it to the note. If it has a substantive effect, that effect needs to be clarified.

d. Section PSC 114.003 (3) (b) should be clarified to specify what is meant by “approval of requirements”. Does the provision authorize a utility to seek a waiver? If so, the provision should state the waiver authority more explicitly.

e. Throughout s. PSC 114.005, the phrases “these rules” and “this chapter” appear to be used interchangeably. If that is the case, the phrase “these rules” should be replaced with the phrase “this chapter” throughout the section. If the phrase “the rules” is intended to refer to something different than the chapter, then that phrase should be defined. The phrases “a rule” and “the rule” should also be replaced with phrases such as “a provision of this chapter”, unless there is an alternative intent. Similarly, in ss. PSC 114.202 and 114.302, the phrase “these rules” should be replaced with references to the chapter or the relevant rule sub-unit(s). Alternatively, “these rules” should be defined. [See s. 1.07, Manual.]

f. The first sentence of s. PSC 114.005 (3) repeats language in s. PSC 114.005 (1) and should be removed.

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

a. In the table of contents for ch. PSC 114, periods should be added to the ends of titles from which they are missing.

b. In s. PSC 114.001 (2), the comma should be deleted after the Madison zip code, and a period should be added after the Internet citation.

c. The sentence “See s. 196.19, Stats.” in s. PSC 114.003 (3) (b) and the sentence beginning with “See s. 196.74, Stats.,” in s. PSC 114.003 (4) should be placed in notes, as is done in s. PSC 114.003 (3) (a).

d. Passive constructions throughout s. PSC 114.005 should be reviewed for opportunities to clarify meaning. For example, in s. PSC 114.005 (4), the phrase “Modifying or waiving certain of the rules will sometimes be necessary...” could be replaced with the phrase “The commission may modify or waive a provision of this chapter if necessary...”.

e. Throughout subch. III, parenthetical notations indicate whether provisions are changes, additions, or deletions to the code, and explanatory directions specify the change or addition being made. The parenthetical notations and explanatory directions should be reviewed and modified for consistency throughout the subchapter. Examples of inconsistencies that should be reviewed include the inconsistent use of capitalization in references to footnote paragraphs; inconsistent ordering of the bracketed citations vis-à-vis the title of the affected provision; and inconsistent use of spacing following the parenthetical notation and the subsequent text.

f. In s. PSC 114.234C1c, the phrase “also covers” should be replaced with the phrase “applies to”. Also, in the second note in that provision, the comma after “dwelling unit” should

be removed. In the third note in that provision, a comma should be added following “Structures”, and the word “for” should be removed.

g. In s. PSC 114.410, in Note 4, the word “area” should be replaced with the word “areas”.