



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 16-094

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 December 2014.]

2. Form, Style and Placement in Administrative Code

- a. SECTIONS 3 and 85 should be removed. It is best to avoid renumbering that is done only to eliminate a gap in numbering. [s. 1.03 (5) (a), Manual.]
- b. In SECTION 4, the existing title should not be underscored.
- c. In SECTION 5, the treatment should be to amend, without renumbering.
- d. In SECTION 20, the note refers to a “live/work’ unit”. Slashed alternatives should not be used in drafting administrative rules. [s. 1.01 (9) (a), Manual.] The department should review this note and replace it with a phrase using the term “and”, “or”, or “or both”, whichever is appropriate.
- e. SECTION 29 repeals and recreates s. SPS 361.30 (1) (b). In doing so, it eliminates reference to Table SPS 361.30 -1. However, SECTION 31 amends this table. The department should review the intent of this rule and whether a reference to Table 361.30-1 should be included. Also, SECTION 31 should be rewritten to refer to Table SPS 361.30-1.
- f. SECTION 32 rennumbers a note that defines a mausoleum. The rule, however, uses the term “public mausoleum structure”. Notes may not create substantive provisions. [s. 1.09 (1), Manual.] The department should review this note and consider whether to define the term “public mausoleum structure”. The department should also consider whether to define other terms used in s. SPS 361.30 (2), such as the term “crematorium”.
- g. In SECTION 46, the reference to s. SPS 361.41 (2) (d) 1. is missing the “1.”.

- h. In SECTIONS 47, 48, and 52, the affected SPS chapter should be identified.
- i. In various places, variations of the phrase “modular multifamily dwelling, modular building system or component of the building system” are used. [Compare ss. SPS 361.45, 361.46, 361.46 (2) (g), and 361.47 (1).] The department should review the terms and use the terms consistently throughout the rule.
- j. In s. SPS 361.47 (3), there should be a period after the subdivision references to “subd. 1”, such that it reads “subd. 1.”. [s. 1.03 (1), Manual.]
- k. In s. SPS 361.47 (5), the last sentence ends with the phrase “inspector or inspectors”. In general, use the singular form of a word. [s. 1.01 (8) (e), Manual.] This repetition is redundant and unnecessary and the word “inspectors” should be deleted.
- l. Section SPS 361.47 (6) (a) creates a title that should be italicized. [s. 1.05 (2) (d), Manual.] In s. 361.47 (6) (b), 1. and 2., the word “become” should be replaced with “becomes” as the term “Wisconsin insignia” is in the singular tense. Also, s. SPS 361.47 (6) (d) 2. refers to a construction compliance certificate, on a form designated by the department, but does not indicate where the form may be obtained. The department should consider using a note to indicate where the form may be found. [s. 1.09 (1), Manual.]
- m. Section SPS 361.48 (2) states that “if the department determines that no further action is warranted, it shall notify the persons affected”. In general, the singular tense of a word should be used. [s. 1.01 (9) (e), Manual.] It is unclear whether the department must notify all persons affected, or some of the persons affected. The department should review the intent of this section and clarify whether “any person” must be notified.
- n. The note created in SECTION 51 appears to be substantive. The department should review the intent of the note and consider placing it in the body of the rule. [s. 1.09 (1), Manual.]
- o. SECTION 56 renumbers and amends s. SPS 362.0202 (1). In doing so, it inserts par. (a). Because the designation for par. (a) is new, and divides the existing text, the designation “(a)” should be underscored. The same comment applies to SECTION 58. [s. 1.06 (1), Manual.]
- p. SECTION 61, regarding a cheese factory, is incomplete. The department should review and complete this provision.
- q. SECTION 65 states that “SPS 362.0402 is created to read” but then uses the number “SPS 362.0423”. The department should review the numbering in this section and revise it as appropriate.
- r. In SECTION 67, the designation “(intro.)” should be removed.
- s. SECTIONS 71 and 72 amend one definition, the definition of “fire separation distance”, but entitles this section, “definitions”. The department should review this section and revise the title to match the content of the section. Also, in SECTION 71, the text of subs. (1) to (4) should be removed, as they are repealed in SECTION 72.
- t. In SECTION 73, the treatment of s. SPS 362.0706 (2) should be separated into its own SECTION, because the rule section is not treated in its entirety. [s. 1.04 (2) (a), Manual.]

u. The note at the end of SECTION 87 appears to be substantive. The department should review the intent of the note and consider placing it in the body of the rule. [s. 1.09 (1), Manual.]

v. In the treatment clause for SECTION 92, the word “and” should be removed.

w. SECTION 100 rennumbers s. SPS 362.1009. Then, SECTION 101 creates a new s. SPS 362.1009. The department should consider not reusing s. SPS 362.1009. The reuse of numbers can cause confusion as to whether the current or previous provision is being referred to and may lead to erroneous cross-references. [s. 1.03 (5) (a), Manual.]

x. In SECTION 102, the title should not be underscored. [s. 1.055 (2), Manual.]

y. SECTION 105 rennumbers s. SPS 362.1015 to be s. SPS 362.1002 (2) and then amends sub. (2), but does not strike-through the old title. The old title should be included with strike-throughs.

z. SECTION 111 amends a title. In addition to including the notation “(title)” in the treatment clause, the notation should also be included in the rule text. [s. 1.05 (3) (a), Manual.] Also, the period should not be underscored as it appears in the original title.

aa. In SECTION 122, the notation “(title)” in the rule text should not be underlined.

bb. It appears that SECTIONS 124, 125, and 127 should be merged into one SECTION, using strike-throughs for the repealed titles.

cc. SECTION 154 creates one exception but the first sentence begins with the plural phrase, “These are department exceptions...”. The word “shall” also contains a strike-through, but it appears the word should be removed. The department should review the intent of this SECTION and amend it accordingly.

dd. The department should review SECTIONS 156 to 158 and consider merging them into one SECTION.

ee. In SECTION 168, the treatment clause cites s. SPS 362.3500 (3) (d), but the rule text cites s. SPS 362.3500 (3) (a). The department should review this SECTION and update either the treatment clause or the rule text so that the citations are consistent. The same comment applies to SECTION 170.

ff. SECTION 176 should be divided into two SECTIONS: first, to amend s. SPS 363.0202 (1), and second, to renumber s. SPS 363.0202 (2) to (2) (intro.) and amend that section as renumbered.

gg. SECTION 179 rennumbers s. SPS 363.0401. Then, SECTION 180 creates a new s. SPS 363.0401 (2) to (5), but does not create a new sub. (1). The department should review the numbering of the subsections in SECTION 180 and consider not reusing s. SPS 363.0401.

hh. SECTION 182 rennumbers s. SPS 363.0403; SECTION 183 creates s. SPS 363.0403 (7) to (13); SECTION 191 creates subs. (1) and (2); and SECTION 193 creates subs. (3) to (5). It is unclear where sub. (6) is created. The department should review the rule and the numbering of the subsections in the new s. SPS 363.0403 and consider not reusing s. SPS 363.0403.

ii. In SECTION 189, when amending s. SPS 363.0401 (1) (c), the cite to s. SPS 363.0405 should be underlined in its entirety.

jj. In the treatment clause of SECTION 196, there should not be a comma placed before “(intro.)”.

kk. In SECTION 209, the colon at the end of s. SPS 364.0301 (2) should be replaced with a period. Also, the note should not be included if it is not being amended.

ll. After the tables in SECTIONS 211 and 221, it appears that there are footnotes denoted by letters. If these are footnotes, a period should be placed after the letters.

mm. SECTION 218 creates s. SPS 364.0403 (5) (d) 2. e. with divisions smaller than subpar. e. However, subdivision paragraphs may not be further divided. [s. 1.03 (2) (f), Manual.] The department should review this SECTION and revise it so as to not include divisions smaller than subdivision paragraphs.

nn. It appears that SECTIONS 223 and 224 could be merged together, by striking through s. 364.0407 (title) along with the other amendments to the renumbered provision.

oo. SECTION 247 uses the acronym “CBRF” but this acronym is not defined anywhere in ch. SPS 366. The department should consider defining this acronym or writing out all of the words in it. [s. 1.01 (8), Manual.]

pp. SECTIONS 254 and 275 both create a section with the title “General”. This title is vague, confusing, and appears to be inconsistent with the choice of titles to other sections in ch. SPS 366. The department should review the intent of this SECTION and consider using a more specific title.

qq. The title to s. SPS 366.0902 (2) that is created in SECTION 261 should be underlined as it is new language.

rr. SECTION 264 renumbers a subsection into a section. In doing so, the title of the subsection is amended to reflect the appropriate formatting. As such, the old title should be included with strike-throughs and the new title should be included and underlined.

ss. In the rule text in SECTION 274, there should be a period in the term “(intro.)”.

tt. The introductory clause for the proposed rule should be updated as needed to reflect any treatment revisions made in accordance with these comments.

uu. The proposed rule incorporates, by reference, or amends prior incorporations, certain provisions of the International Fire Code. The department should comment in the rule analysis on its compliance with s. 227.21 (2), Stats., and s. 2.08, Manual.

3. Conflict With or Duplication of Existing Rules

In SECTION 15, it appears that the note is creating a definition for the “International Fire Code”. This definition is in conflict with the definition in s. SPS 361.04 (9). Also, notes may not create substantive provisions. [s. 1.09 (1), Manual.] The department should review this note and amend it so that it is consistent with definitions in the administrative code and does not contain substantive provisions.

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

a. In the plain language analysis, there is no explanation of changes made to ss. SPS 303.03 (2) (a) and 314.10 (2) (a) 3. a. and b. Because the plain language analysis appears to include most, if not all, of the changes made in the rule, the department could consider adding these changes as well.

b. In the plain language analysis, the second bullet point in the list of changes made to ch. SPS 361 lists changes made to incorporate requirements from 2015 Wisconsin Act 333, however, the citation to s. SPS 361.03 (6), is incorrect. It appears that the correct citation is to s. SPS 361.03 (5) (b) 5.

c. SECTIONS SPS 361.03 (8) to (10) each start with the word “those”. What this word is referring to, however, is unclear. It appears that this word is used in place of the word “all”. The department should review the intent of the use of the word “those” and replace this word with clearer terms. [s. 1.01 (9) (c), Manual.]

d. In SECTION 18, the definition of “compliance assurance program” refers to “approved construction documents”. It is unclear to what the term “construction documents” is referring. It is also unclear who approves them. The department should review this definition and clarify these questions.

e. In SECTION 56, because of the comma placing and the different prepositions used in the phrase, “in closely packed piles, or on pallets, in racks or on shelves”, it is unclear what this phrase means. It appears that this phrase means, “in closely packed piles or on pallets, racks, or shelves”. The department should review the intent of this phrase and rewrite it to read more clearly.

f. In SECTION 59, s. SPS 362.0202 (2) (c) uses the phrase “when the motor vehicle meets...”. It appears that this phrase should read: “if the motor vehicle meets...”. The department should review the intent of this phrase and consider revising it.